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2026:GUJHC:50316

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 5275 of 2016

With
R/CRIMINAL MISC.APPLICATION NO. 7386 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No

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GUNVANTBHAI VALLABHBHAI AMBALIYA
Versus
STATE OF GUJARAT & ANR.

==========

Appearance:
MR SHITAL R PATEL(2166) for the Applicant(s) No. 1
MR. KISHAN H DAIYA(6929) for the Applicant(s) No. 1
MR P P MAJMUDAR(5284) for the Respondent(s) No. 2
MR KM ANTANI, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE P. M. RAVAL**

Date : 10/08/2026

JUDGMENT

PRELUDE:

1. By way of the present applications under Section 482 of the Code of Criminal Procedure, 1973, the applicants have prayed for quashing and setting aside the F.I.R. being C.R. No. I-04 of 2016 registered with Chowk Bazaar Police Station, Surat, for the alleged offences punishable under Sections 406, 420, 465, 467, 468, 471 and 114 of the Indian Penal Code.

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FACTUAL MATRIX:

2. The averments in FIR in nutshell alleges the following:

a) That informant is an ex-wife of one Dali Barjorji and between them divorce took place in 2011;

b) Land bearing Survey No. 34/2 paiki, land comprising Block No. A/1 and Block No. A/6, which is allotted FP No. 20 in town planning Scheme No. 35 plotting were made; amongst such plots, Plot Nos. 13/A, 14, 15, 16, 17, 18, 19, 20, 20A admeasuring 458.98 sq. yard 384 square meter land being open parcel of land with compound wall;

c) Original owner of said land was father-in-law of original complainant namely Barjorji Jamshedji and mother in law Hillmay Barjorji, who died on 17.11.1989 and on 20.06.1966 respectively;

d) Jimmy Barjorji – brother-in-law of the complainant (complainant's husband's brother) was the only successor of deceased also died on 13.05.2000. The complainant did not know as to where her husband – Dali Barjorji present was staying;

e) My sister-in-law Gul Barjorji no. 2 to 4 has given up their share/rights by entry No. 8005, dated 01.09.1990/1991;

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f) Therefore, my brother-in-law - Jimmy Barjorji Singanporiya becomes exclusive owner of the said land and an Entry No. 6682 was entered 30.05.1981;

g) Said Jimmy Barjorji Singanporiya was unmarried, therefore, he had executed a Will dated 16.12.1999, under which all his movable and immovable properties including the present land making the complainant and her son Adil the legal owner of the property;

h) On 17.02.2015 upon publishing a Notice for sale of the property in the daily newspaper Gujarat Samachar, many brokers came; at that time in April 2015, applicant, i.e. Gunvantbhai Vallabhbhai Ambaliya resident of Shiv Chhaya Society indicated all the brokers and the persons interested came for sale that property belongs to him, which came to the knowledge of the complainant;

i) When original complainant inquired, she came to know that said Gunvantbhai having adjoining land and on the room situated in that land a notice was displayed making reference of our land stating that the said land belongs to Gunvantbhai and Rajubhai Laxmanbhai Rabari and without their permission, no one should enter into the land. Thereafter informant personally inquired from which she came to know that her foi-Sasu – Dhanmai, daughter of

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Jamshedji Kawasaji, who expired 17.07.1946 and though there was no entry as to ownership in the Pedigree and Village Form Nos. 7 and 12, her so-called power of attorney holder - Hemant Ramakant Dusputre, resident of Singanpor, Taluka: Choryasi, Surat sold her land to one Devjibhai Vitthalbhai on 01.09.1988 by way of a registered Sale Deed;

j) On the basis of such sale deed, Devjibhai Vitthalbhai executed a power of attorney on 17.07.2001 in favour of Gordhanabhai Thakorbhai Vadodariya of Katargam; and on the basis of that power of attorney Gordhanbhai sold the land to Gunvantbhai Vallabhbhai Ambaliya [present applicant] by registered sale deed dated 21.02.2012 by registered sale deed No. 3465/2012 in respect of Survey No. 34/2 paiki, land comprising Block Nos. A/1 and A/6, Final Plot 20/A total area 458.90 sq. yard 384 square matter; and the notice board affixed showing the land belongs to him;

k) Thus, my in-law [foi-sasu] Dhanmai expired on 17.07.1946 and incident of making her bogus power of attorney was made in 1988 by Hemant Ramakant Dusputre and sold our land to Devjibhai Vitthalbhai by registered sale deed dated 01.09.1988; on the basis of such sale deed Devjibhai Vitthalbhai executed a power of attorney on 17.07.2001 in favour of one Gordhanbhai Thakarsibhai Vadodariya of Katargam;

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l) On the basis of power Gunvantbhai Vallabhbhai Ambaliya has purchased Plot No. 13/A 13,14,15,16,17,18,19,20 and 20/A total area 458 Sq. yard = 384 sq. meter of Final Plot No. 20 made of Block No. A/2 and Block No. A/6 of Survey No. 34/2 paiki by reg. sale deed dated 27.2.2012 from power of attorney holder-Gordhanbhai Thakarsibhai Vadodariya;

m) Accused Gunvantbhai Vallabhbhai Ambaliya and Rajubhai Laxmanbhai Rabari has put a notice showing their ownership of land and have entered and in possession of our land in conspiracy I have filed this complaint for investigation.

SUBMISSIONS:

3. Learned advocates for the applicants would submit that bare reading of the FIR, it clearly transpires that same is in pure abuse of the process of law; it clearly comes on record from the complaint itself that the complainant has deliberately suppressed the relevant material facts, produced false and fabricated document; besides the fact that if any offence is committed than offence is committed by the respondent No. 2 by creating a false and grossly belated claim to grab the valuable property of the registered owner -the applicant by producing false and unreliable

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evidence with complete unreasonable theory which no reasonable man of prudence may accept.

3.1 Learned advocates would submit that as a matter of fact the following most relevant facts deserves to be taken a note to appreciate that how the FIR lodged by the her is in pure abuse of the process of law and suppression of several material facts amounting to fraud with the solemn machinery of law/court;

3.2 That land bearing Survey No. 34/2 of mouje Katargam Surat consist of 11,330 sq. meter;

3.3 The facts are not in dispute that in respect of the entire land bearing revenue meter land, layout Survey No. 34/2 admeasuring 11,330 square Plan/Raja Chitthi was obtained/sanctioned by the than owner Barjorji Jamshedji from SMC under the provisions of Gujarat town planning Act on 14.03.1988; he made plotting into 105 plots.

3.4 Thereafter, on 19.08.1988 by Barjorji Jamshedji and 5 other co-owners of all those plots executed a joint power of attorney in favour of one Hemant Ramakant Dusputre; it is significant to note during their lifetime none of those 6 owners never challenged the legality and validity of the power of attorney.

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3.5 Thereafter, on the basis of the power of attorney - Hemant Ramakant Dusputre executed separate sale deeds for 6 units [A1 to A6] in favour of 6 different persons by registered sale deeds dated 01.09.1988;

3.6 On the same day, owners of unit B/1 to B/3, they themselves personally executed registered sale deeds of their share [units B/1 to B/3] in favour of 3 different persons.

3.7 That Plots Nos. 21 to 105 were already sold from time to time and construction have been made therein by plot holders nearly two decades back; and they are residing on such constructed residential premises since two decades without any disturbance.

3.8 As there was reservation, Plot Nos. 1 to 20, sale deed remained unexecuted by concern owners at the relevant time; reservation was lifted some time in 2011; thereafter applicant has purchased Plot Nos. 13/A to 20/A admeasuring 384 sq. meter by different registered sale deed through power of attorney holder of concern owners of those Plots Nos. 13/A to 20/A.

3.9 Plots 13/A to 20/A admeasuring 384 sq. meter forming Plot Nos. A/1 to A/6 purchased on 01.09.1988 by following persons:

Purchasers	**From whom (seller)**	**Unit Nos.**
Ramjibhai Savjibhai	Hormasji Jamshedji	A/1

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Shamjibhai Ranchhodbhai	Parsi Hormasji Jamshedji	A/2
Kanji Ravji	Banubai d/o Jamshedji	A/3
Durlabh VVitthal	Hilmai d/o Jamshedji	A/4
Tulsi Vitthal	Dinmal d/o Jamshedji	A/5
Devji Vitthal	Dhanmal d/o Jamshedji	A/6

3.10 The aforesaid purchasers of sale deed dated 19.08.1988 of Plot Unit Nos. [A/1 to A/6 comprising Plot Nos. 1 to 20] thereafter had executed a power of attorney in favour of Gordhanbhai Thakarsibhai Vadodaria on 17.07.2001.

3.11 On the basis of said power of attorney dated 17.07.2001 and power was seems to be verified on 10.05.2010 by the competent authority, thereafter Gordhanbhai Thakarsibhai sold Plot Nos. 1 to 12 in favour of third-party by registered sale deed 28.02.2012.

3.12 On that very same date, Power of attorney – Gordhanbhai Thakarsibhai also executed a registered sale deed for Plot Nos. 13A to 20A in favour of present applicant on receipt of entire valuable consideration. From such date, the applicant is owner and in possession of the land in law and in fact;

3.13 Somehow, informant herein was threatening the applicant under one or the other pretext with the help of antisocial elements, the applicant filed an application/complaint on 04.05.2015 to the office of police Commissioner about threat being given to

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applicant; said copy of the complaint was given to the PI to Chowk Bazaar Police Station, Surat with copies thereof to the Hon'ble Chief Minister and the Hon'ble Home Minister.

3.14 That respondent No. 2 herein, somehow, made prearrangement and made an application to Chowk Bazaar Police Station on 12.04.2015 however, copy of said application is not provided;

3.15 Thereafter statement of applicant was taken on 24.06.2015, wherein the applicant had produced a photo copy of a registered sale deed ownership/title and possession and pointed out that claim of the respondent No. 2 is in abuse inasmuch as false; that statement is not provided but it has been referred in further statement dated 12.08.2015 of applicant.

3.16 On 12.08.2015 after recording statement of understanding receipt signature of applicant; copy of that was made available to applicant through RTI, stating that complaint filed by the applicant dated 04.05.2015 no offence made out;

3.17 That on the same date on 12.08.2015 PI, Chowk Bazaar Police Station, Surat City submitted report to DCP, Zone-3, Surat City, stating that as allegedly no offences is made out application of the applicant is filed and at the same time, application [CA No. 213/15] dated 12.04.2015 given by the respondent No. 2 herein, on

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conclusion of inquiry, as alleged offence is made out under Sections 406, 420, 465, 467, 468, 471 and 114 of the IPC Report was submitted.

3.18 An application on 19.08.2015 was given by the respondent No. 2 complaining that applicant herein should be restrained from constructing wall surrounding undisputed plots, on arrival of police, the respondent No. 2 and the applicant was taken to the police station and thereupon applying Sections 151, 107. The applicant was taken into custody; and the next date of 19.07.2015 ASI of Chowk Bazaar Police Station produced the applicant before the executive magistrate with a complaint that applicant is a head strong person and very aggressive and according to him likely to commit a breach of peace and therefore, the applicant has been arrested under Section 151 of Cr.P.C. and under Section 107 with character certificate of good behaviour appropriate time for bail is needed.

3.19 On 28.08.2015, ASI, Chowk Bazaar Police Station submitted a report to create police station that in connection with the application of respondent No. 2 with regard to Section 107, 151 of 19.08.2015 be filed.

3.20 On 05.09.2015 Court Commissioner from the panchnama with regard to the disputed plots finding the applicant to be in actual and physical possession;

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3.21 Respondent No. 2 herein, indulging into the criminal activity attracting office under Section 452, 384, 386, 506(2) 120(B) of IPC 2nd complaint was lodged before the officer of police Commissioner 05.10.2015.

3.22 As nothing was done and the harassment was extreme on the part of the respondent No. 2 herein with the help of anti social elements, the applicant sought police protection at his cost.

3.23 Somehow, till date not response has been given with regard to such application dated 29.12.2015 with regard to providing of police protection;

3.24 Interestingly, Chowk Station registered an FIR on 10.01.1016 alleging an offence punishable under Sections 406, 420, 465, 467, 468, 471 and 114 of the IPC bearing First Information being C.R. No. I-04/16 against various persons; the FIR dated 10.01.2016.

3.25 Thus, it is argued that as such, on reading the contents of an FIR it becomes clear that as such there is no offence committed by the applicants at all; on the contrary if any offence is committed, it has been committed by respondent No. 2 and her associates; somehow, the complaint is registered with the help of PI Shri Nakum, who facilitate the respondent No. 2 and their associates to take the law in hand and actively assisted respondent No. 2 to allowing to entre in to land amounting to criminal tress pass with

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active support and thereby attempting to grab the valuable land of the applicant who is a registered owner;

3.26 As the revenue record is not updated correctly showing the previous registered sale transactions, existing state of affairs on the land since long as unfortunately happening in Katargam area in number of cases; and Surprisingly in the revenue record in 7 "12" still name of one Jimmy Barjorji appears as owners of whole land bearing Survey No. 34/2 admeasuring 11,230 sq. meter, though in reality title and occupation shows otherwise.

3.27 Learned advocates for the applicants would place reliance on the relevant entries and Form 7/12 coupled with part plan of Survey No. 34/2 of zoning of SMC with F form to show, that because of the fact that the name of Jimmy Barjorji, though, who died in 1999, whose name was running in the revenue record also out till date, and the revenue record was not updated with regard to the transaction narrated herein above, consequently in the F form prepared by the authority also the name of dead person Jimmy Barjorji is reflected;

3.28 Learned advocates for the applicants would further submit that there are class of people who are in search of situation like that of the present case and creates a litigation, either in the form of civil or criminal and start to harass a registered owner of the properties dubious method; such person required to be

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discouraged from misusing the solemn machinery of the law; in the present case as the revenue record has not been updated and not showing the correct state of affairs existing existed on the land in question, the respondent No. 2 with the help of antisocial elements conceived an idea to create a false claim and to pressurize the applicant has filed application and FIR; as a matter of fact from the reading of the contents of the FIR itself it becomes clear that upon No. 2 who is not in a position to establish his claim at all in the civil court, has chosen to find out its shortcut method of filing of an FIR with the active influencing the investigating agency.

3.29 Making further submission learned advocates for the applicants would submit that ingredients of the FIR did not warrant the immediate arrest of the applicant at all; somehow upon registration of the FIR, on the very date on 10.01.2016, the applicant came to be arrested by Police Inspector Shri Nakum Chowk Bazaar Police Station and interestingly, while producing the applicant before the Court, is said inspector sought remand of applicant for 10 days. However, the court did not find favour with such an unusual and unreasonable remand of applicant rejected the request of remand and also turned the request of bail under Section 437; therefore, the applicant under such compelling circumstances was required to file regular bail application under Section 439 of Cr.P.C. on 15.01.2016. In the said bail application an affidavit dated 18.01.2016 was filed.

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3.30 However, an order dated 22.01.2016 the Sessions Court ordered to release the applicant on regular bail in Cr.M.A. No. 157/2016.

3.31 On 14.02.2016 respondent No. 2 along with the 4 to 5 other antisocial elements criminally traced passed upon the land of the applicant without his consent and was also throwing movable goods of the applicant with the active assistance of PI Shri, the applicant personally went to be a Chowk Bazaar Police Station Surat City, and given a written complaint alleging an offence under Section 342, 452, 384, 386, 506(2) read with section 120(B) of IPC.

3.32 It is argued by the learned advocate for the applicant (Hemant Ramakant Dusputre that he had signed some documents acting on advice of Jimmi Barjorji, who allegedly prepared a Will and the said document termed as Power of Attorney, and thus, on a wrong premise, the applicant is arrayed in an FIR which is filed with gross delay.

3.33 Thus, it is argued that in the context of the aforesaid submissions and reading of the FIR *prima facie* and material that emerges from the record, no offence as alleged in the FIR getting at acts allegedly punishable under Sections 406, 420, 465, 467, 468, 471, 114 of IPC and the FIR in gross abuse of the process of law, inasmuch as suppressing the material facts, inasmuch as the

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respondent No. 2 who is not in a position to establish his case before the civil court has found out shortcut and had taking the assistance of the Investigating agency, of the issue, and even according to the ingredients of the FIR against the present applicants are of purely civil in nature, thus has argued to quash the FIR.

4. Learned advocate Mr. P. P Majmudar for the original complainant and learned Additional Public Prosecutor would submit that land bearing Revenue Survey No. 34/2 Paiki Block No. A/1 and Block No. A/6 situated at Mouje Surat Dist.: Surat City Mouje Katargam, which came under T.P. Scheme and was thereafter, given Final Plot No. 20 was of the ownership of the father-in-law of respondent No. 2 - complainant, namely, Barjorji Jamshedji and mother-in-law of complainant namely – Hillamai Barjorji and after their death on 17.11.1989 and 10.06.1976 respectively, the said land came by way of share to their legal heirs i.e. brother-in-law, sister-in-law and husband of the complainant. It is further stated that sister-in-law of complainant Aranvaaz, husband of complainant and sister-in-law Gul Barjorji have relinquished their rights over the said land and Entry No. 8005 is also made by Talati-Cum-Mantri on 01.09.1990/91 to that effect. It is further stated that thereby, the brother-in-law of complainant Jimmy Barjorji had absolute right over the land and Entry No. 6682 was also mutated on 30.05.1981 in Village Form No. 6. It is further stated that on 16.12.1999 the said brother-in-law of the

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complainant executed a will in favour of complainant and son of complainant for the aforesaid land as well as his other movable and immovable properties. It is further stated that brother-in-law of complainant passed away on 13.05.2000 and after his death, complainant and her son became the owners of the entire properties of brother-in-law of complainant, including the aforesaid land.

4.1 It is further submitted that on 17.02.2015, the complaint had given an advertisement in Gujarat Samachar Newspaper for selling the aforesaid land and pursuant to the said advertisement, certain brokers had come and at that time in April 2015 Co-accused Gunvantbhai Ambaliya (the present applicant) had informed the broker and other persons who had come to see the land that the said land belongs to him and said Gunvantbhai had also affixed a notice on the room on the land adjacent to the land of complainant wherein description of the aforesaid land of complainant was also given and it was stated in the notice that the lands belong to him and one Rajubhai Rabari and that nobody should enter the lands without permission. It is further submitted that after coming to know the said fact, the complainant made an inquiry and found that though the aunt-in-law of complainant Dhanmai d/o Jamshedji Kawasaji has not right over the aforesaid land and she has passed away back on 17.07.1946, co-accused Hemant Dusputre, so called power of attorney holder of said Dhanmai Kawasaji sold the aforesaid land of complainant to

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Devjibhai Vitthalbhai on 01.09.1988 through a registered sale deed No. 10060 on the basis of forged and bogus Power of Attorney. I state that on the basis of said sale deed, Devjibhai Vitthalbhai had given a power of attorney to one of accused-Gordhanbhai Vadodaria on 17.07.2001 and on the basis of said power of attorney, accused-Gordhanbhai Vadodaria executed a sale deed bearing No. 3465 of 2012 on 27.02.2012 in favour of Gunvantbhai Ambaliya for land situated at Survey No. 34/2 Paiki Block No. A/1 and Block No. A/6 Final Plot No. 20 having plots Paiki Plot Nos. 13/A, 13, 14, 15, 16, 17, 18, 19, 20 and 20/A admeasuring 384 sq.mtrs.

4.2 Learned advocates further submitted that accused Gunvantbhai and Rajubhai Rabari have also placed a board indicating their ownership over the land of the complainant and all the accused persons in connivance with each other have created bogus power of attorney and grabbed the land of complainant. It is further stated that the accused had obtained power of attorney from nine persons on 09.07.2001 and out of said nine persons Devjibhai Vitthalbhai have passed away on 01.01.1994 and Shamjibhai Dhameliya have passed away on 14.05.2013 and thus, it clearly appears that absolutely false and bogus power of attorney is created by the accused only with a view to grab the land of the complainant and to obtain monetary benefit by selling away the land belonging to the complainant.

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4.3 Learned advocates further submitted that the so-called Power of Attorney dated 19.08.1988 is a bogus and forged document and one of the executors Hormasji Jamshedji had passed away much prior to the said dated i.e. on 06.06.1961 and on 17.07.1946 another executor i.e. Dhanmai Dalal has also passed away. Thus, the sale deed executed on the strength of such false documents would also be bogus, and unenforceable. The present applicant is not a bona fide purchaser and even he has purchased the so-called plots on the strength of a fake and forged Power of Attorney of Ramjibhai and Devjibhai purported executed in favour of Gordhanbhai Vadodaria, which is executed on 17.07.2001, on which date one of the executors i.e. Devjibhai Vitthal has already expired on 01.01.1994. Thus, it is argued that investigation is required in the matter and, therefore, such investigation may be allowed to be continued.

4.4 Learned advocate for the informant would further submit that Regular Civil Suit No. 119/16 is also instituted challenging the sale deeds dated 05.08.1988 as well as 01.03.2012. In the said suit original defendant No. 5 had filed an application under Order 7 Rule 11, which came to be allowed on 13.04.2022 by learned 10th Additional Senior Civil Judge, Surat and the suit of the answering respondent came to be rejected. It is further stated that against the said order dated 13.04.2022, the answering respondent has filed Regular Civil Appeal No. 107/2022, and the same is pending before the Principal District & Sessions Judge, Surat.

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4.5 It is further submitted by learned advocate for the informant that pursuant to the lodging of FIR, the Investigating Officer has conducted proper investigation and after conclusion of the investigation, thereafter, charge-sheet has been filed and therefore, the applicant has an alternative remedy to file discharge application before the concerned Court. It is further argued that at this stage, the present petition may not be entertained since the grounds raised in the petition are in the nature of defences of the applicant, which cannot be considered at the stage of quashing of FIR. Moreover, the applicant wants this Hon'ble Court to conduct a mini trial, which is also impermissible, considering the scope of Section 482 of the Code of Criminal Procedure, 1973 thus, has argued to reject the present petition.

4.6 Heard, the learned advocates for the respective parties and perused the material available on record.

ISSUES FOR DETERMINATION:

5. Upon evaluating the rival contentions and examining the charge-sheet material, the following questions arise for determination:

> *1) Whether a subsequent purchaser under a registered sale deed can be held criminally liable for forgery and cheating (Sections 465, 467, 468, 471 IPC) because antecedent or immediate Powers of Attorney were executed on behalf of dead persons, in the absence of*

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material showing applicants' participation in fabricating those PoAs?

2) Whether a third-party informant – claiming title via an unprobated Will and whose civil suit challenging the same conveyances was rejected under Order VII Rule 11 CPC – can maintain a criminal prosecution against a subsequent registered owner?

3) Whether the filing of a charge-sheet fetters the inherent jurisdiction of this Court under Section 482 Cr.P.C. / Section 528 BNSS to quash proceedings to prevent an abuse of process?

ANALYSIS:

6. **Criminal Culpability (Sections 465, 467, 468, 471 IPC):**

6.1 The central thrust of the prosecution is that because Dhanmai died in 1946 (before the 1988 PoA), Devjibhai died in 1994 (before the 2001 PoA), the entire lineage of conveyances is a nullity and clearly attracts penal provision as alleged in the FIR.

6.2 There is a clear line of demarcation between a civil nullity and criminal liability. Under Civil Law, a PoA executed by or on behalf of a deceased principal is void *ab initio*, as authority terminates upon death (Section 201, Indian Contract Act, 1872). The legal heirs may successfully obtain a declaration from a Civil Court setting aside such deeds.

6.3 However, under Criminal Law, to attract the offences of forgery under Sections 463 and 464 IPC, the prosecution must

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strictly prove that the accused **himself made, signed, or executed a false document** with intent to cause damage or deceive.

6.4 In ***Mohammed Ibrahim and Others v. State of Bihar and Another, (2009) 8 SCC 751***, the Hon'ble Supreme Court authoritatively analyzed Section 464 IPC and held:

> *"There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed claiming that he is the owner of the property when he is not. The former is not forgery; the latter may be a civil wrong, but it does not constitute the criminal offence of making a false document... When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorized by someone else. Therefore, execution of such document (say a sale deed) by a person, purporting to convey a property maintaining that it is his, will not be 'making a false document'."*

6.5 This principle was affirmed by a three-Judge Bench in ***Sheila Sebastian v. R. Jawaharaj and Another, (2018) 7 SCC 581***, where the Supreme Court held:

> *"Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery."*

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6.6 Applying these authoritative rulings to the present facts, following emerges:

a) The applicant (in Criminal Misc. Application No. 5275 of 2016) was neither the maker, signatory, nor witness to the 1988 PoA or the 2001 PoA;

b) In 2012, the applicant (in Criminal Misc. Application No. 5275 of 2016) bought the plot *via* Registered Sale Deed No. 3465/2012 from the recorded PoA holder (Gordhanbhai) upon paying valuable consideration;

c) There is no material in the Charge-sheet establishing that the applicant (in Criminal Misc. Application No. 5275 of 2016) had prior knowledge that Dhanmai died in 1946, Devjibhai died in 1994;

d) A subsequent purchaser cannot be branded a criminal conspirator under Section 114 IPC for latent defects or antecedent fabrications in title documents committed by third parties decades earlier. Further, admittedly, there is no invocation of Section 120B of the IPC so as to suggest conspiracy out of common intention by the accused and act in furtherance thereto.

7. **Absence of Cheating (Section 420 IPC) and *Locus Standi*:**

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7.1 To constitute "Cheating" under Section 415/420 IPC, there must be a fraudulent or dishonest inducement by the accused causing the complainant to deliver property.

7.2 In the present case, the applicant (in Criminal Misc. Application No. 5275 of 2016) never interacted with, made representations to, or induced respondent No. 2 (Informant of the FIR). Respondent No. 2 claims derivative title as the sister-in-law of Jimmy Barjorji based on an unprobated Will dated 16.12.1999.

7.3 Under the settled law if "A" sells land to "B" under a defective title, "A" does not cheat "C" (who claims true title). "C" has suffered no inducement at the hands of "A" or "B". The remedy for "C" lies exclusively in a Civil Court for declaration of title and recovery of possession. More so, when none of the heirs of Devjibhai have come forward to claim that despite of Devjibhai's death the property has been transferred to the present applicant (in Criminal Misc. Application No. 5275 of 2016).

8. Rejection of Civil Suit (Order VII Rule 11 CPC) & Abuse of Process:

8.1 Respondent No. 2 instituted Regular Civil Suit No. 119/2016 challenging these exact sale deeds. The Civil Court, *vide* judgment dated 13.04.2022, **rejected the plaint under Order VII Rule 11 CPC**.

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8.2 Merely because a Regular Civil Appeal (RCA No. 107/2022) is pending against the rejection does not permit Respondent No. 2 to use the criminal machinery to bypass a judicial setback in the Civil Court.

8.3 The Supreme Court has repeatedly held that converting a pure civil title dispute into a criminal prosecution to exert arm-twisting pressure on a registered property holder is a clear abuse of process. In ***Paramjeet Batra v. State of Uttarakhand and Others, (2013) 11 SCC 673,*** the Court held:

> *"A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court."*

8.4 **In *G. Sagar Suri and Another v. State of U.P. and Others, (2000) 2 SCC 636***:

> *"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a shortcut of other remedies available in law."*

9. The case falls squarely within Categories 1 and 7 of the landmark decision in ***State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp (1) SCC 335*** insofar as applicant in Criminal Misc. Application No. 5275 of 2016 is concerned.

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10. **Filing of Charge-Sheet is no bar to Section 482 Jurisdiction:**

10.1 The contention of Respondent No. 2 that filing a charge-sheet bars relief under Section 482 Cr.P.C. is legally untenable. In ***Anand Kumar Mohatta and Another v. State (NCT of Delhi), (2019) 11 SCC 706***, the Apex Court held that the High Court can exercise its inherent jurisdiction at any stage, including after the Charge-sheet is filed, if the uncontroverted allegations fail to establish the statutory ingredients of the alleged IPC offences.

10.2 Forcing a *bona fide* subsequent purchaser (*i.e. the applicant in Criminal Misc. Application No. 5275 of 2016*) to undergo a criminal trial when the foundational IPC ingredients are absent would amount to a grave miscarriage of justice.

11. **Relevancy of the decisions relied upon**:

11.1 Learned advocates for the applicants would rely upon a decision of the Apex Court in the case of ***Kishan Singh (Dead) through LRS. v. Gurpal Singh and Others, (2010) 8 SCC 775***, more particularly, paragraph 22 thereof, which reads as under:

> *"In cases where there is a delay in lodging an FIR, the Court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In*

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such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal poceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal Court. The Court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private ad personal grudge and to enmesh the other party in long and arduous criminal proceedinbs, the Court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case."

11.2 Learned advocates for the applicants would further rely upon a decision in ***Bhikhubhai Govindbhai Patel and Another v. State of Gujarat and Another*, 2026 INSC 532**, more particularly, paragraph 41 thereof, which reads as under:

"41. The delay in registration of the FIR is another circumstance which cannot be ignored. The incidents in question pertain to the year 2001 whereas the FIR came to be registered only on 31.12.2009 after a delay of nearly eight to nine years. The High Court accepted the explanation offered by Respondent No.2 that a Government Circular dated 23.07.2003 discouraged registration FIRs involving civil disputes. In our view, the said explanation is not wholly satisfactory. The circular itself cannot explain the inaction by respondent No.2 between 2001 and 2009, particularly when respondent No.2 was actively litigating before competent Courts throughout the said period and had access to all legal remedies including under Sections 154(3), 156(3) and 200 of the Cr.P.C."

11.3 Thus, learned advocates for the applicants would submit

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that in the present case also there is substantial delay in lodging the FIR and that the criminal proceedings have been initiated with a *mala fide* intention, with a view to harass the present applicants and as thus, argued to allow the present applications.

12. As against that, learned advocate for the complainant Mr. P.P. Majmudar would rely upon decision of the Hon'ble Supreme Court in the case of ***State of Maharashtra v. Ishwar Piraji Kalpatri and Others***, **(1996) 1 SCC 542**, more particularly, paragraph 22 thereof, which reads as under:

> *"22. In fact, the question of mala fides in a case like the present is not at all relevant. If the complaint which is made is correct and an offence had been committed which will have to be established in a court of law, it is of no consequence that the complainant was a person who was inimical or that he was guilty of mala fides. If the ingredients which establish the commission of the offence or misconduct exist then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the prosecution. In the instant case, specific averments of facts have been made whereby it was alleged that the respondent had disproportionately large assets. Mala fide intention of the appellant in launching prosecution against the respondent with a view to punish him cannot be a reason for preventing the court of competent jurisdiction from examining the evidence which may be led before it, for coming to the conclusion whether an offence had been committed or not. Allegations of mala fides were also made in P.P. Sharma case against the informer. It was held by this Court that when an information is lodged at the police station and an offence is*

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> *registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings."*

12.1 Learned advocate for the complainant Mr. P.P. Majmudar further relied upon an oral order dated 29.11.2024 passed in Criminal Misc. Application No. 83 of 2016 with Criminal Misc. Application No. 23721 of 2015, in support of his contention that, when *prima facie* allegations disclosing the involvement of the petitioners in the commission of the offence are made, it would not be appropriate to quash the complaint at the preliminary stage. He would, therefore, submit that the present applications may be rejected.

13. The Court has considered the judgments relied upon by the learned advocates appearing for the respective parties.

13.1 Before the ascertaining applicability of the above pronouncements, it would be profitable to refer to the judgment in the case of ***Bhavnagar University v. Palitana Sugar Mills (P) Ltd. And Others, AIR 2003 SC 511***, wherein it has been held as under:

> *"A decision, as it is well-known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well-settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.*

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[Smt. Ram Rakhi v. Union of India & Ors. [AIR 2002 Delhi 458], Delhi Administration (NCT of Delhi) v. Manoharlal [AIR 2002 SC 3088], Haryana Financial Corporation and Anr. v. M/s Jagdamba Oil Mills & Anr. [JT 2002(1) SC 482] and Dr. Nalini Mahajan etc. v. Director of Income tax (Investigation) and Ors. [(2002) 257 ITR 123].”

13.2 Thus, keeping in view the principles laid down by the Apex Court in ***Palitana Sugar Mills (supra)***, referred to herein above, this Court has considered the decisions relied upon by the learned advocates for the respective parties. However, for the reasons stated herein above, and after considering the parameters laid down by the Hon’ble Supreme Court in various decisions, the Court has reached to the conclusion that *prima facie* case is made out in favour of the applicant in (in Criminal Misc. Application No. 5275 of 2016) to exercise discretion under Section 482 Cr.P.C.

13.3 As far as the decision relied upon by the learned advocate for the complainant in the case of ***Ishwar Piraji (supra)*** is concerned, in the facts of the said case, the Court was not satisfied that the applicant had acted in a *mala fide* manner in lodging the FIR and, therefore, held that the observations made by the High Court with regard to *mala fides* against the complainant/informant were wholly unjustified and without any basis. However, in the facts on hand, the present applicant (in Criminal Misc. Application No. 5275 of 2016) is the subsequent purchaser for value. The person alleged to have executed the Power of Attorney had expired in 1994; however, his heirs are not before this Court. The

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other persons who had executed the Power of Attorney have also not raised any grievance coupled with the fact that initial sale was also through a Power of Attorney in the year 1988, wherein six sale transactions were entered into by the original Power of Attorney holder of the original landowners, one of whom is alleged to have expired in the year 1946 and another in 1961. However, it is only against the present subsequent purchaser (applicant in Criminal Misc. Application No. 5275 of 2016), who is the buyer under the said sale deed, that the FIR has been lodged, and not against the seller who is alleged to have entered into the sale deed with the present applicant (in Criminal Misc. Application No. 5275 of 2016) by virtue of the Power of Attorney of two persons, one of whom had expired. Under such circumstances, the cited case is of no help to the complainant.

13.4 As far as reliance on the decision rendered in ***Criminal Misc. Application No. 83 of 2016, in the case of Babubhai Govindbhai Hapani and Others, (supra)*** is concerned, there also, the facts were to the effect that the complainant was the owner of the property in question by way of a registered sale deed dated 11.03.2008, and thereafter, on the basis of a Memorandum of Understanding, under a registered sale deed, sold the land in question to accused Nos. 1 to 3. However, in the absence of compliance with the Memorandum of Understanding, the sale deed dated 30.07.2008 came to be cancelled. However, despite the cancellation of the sale deed in favour of accused Nos. 1 to 3, they entered into a registered sale

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deed with accused Nos. 4 and 5 on 19.01.2010. However, on 19.01.2010, the original owners had sold the said land in question to one Minesh Patel by a registered sale deed dated 30.01.2008. Another sale deed was executed between accused Nos. 10 and 13 and accused No. 6 *qua* a certain portion of the land in question on 01.11.2010, wherein accused No. 1 stood as a witness. Thus, under such circumstances, the Court held that accused No. 1 had knowledge about the fact that the complainant was the owner of the land in question and that the sale deed was cancelled on 23.07.2008. Criminal conspiracy was established from a perusal of the complaint itself. However, accused No. 6 further executed a registered sale deed on 20.01.2011 in favour of one Girdhar Sorathiya. Thus, under such circumstances, the Court did not interfere with the quashing of the FIR and rejected the petitions. In the instant case, the facts are totally different and the cited case is of no help to the complainant for the reasons stated herein above.

SUMMING UP:

14. While the execution of Powers of Attorney on behalf of deceased principals (Dhanmai in 1988, Devjibhai in 2001) renders those instruments and conveyances ***void ab initio***—a matter that must be adjudicated on its own merits in the pending Regular Civil Appeal No. 107/2022, it **cannot form the basis of a criminal prosecution** for Forgery and Cheating against the Applicant (purchaser) in the complete absence of *mens rea*, deception of the informant, or direct authorship of forgery of PoA in the year 2001

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despite of death of Devjibhai in 1994 so far as the applicant in Criminal Misc. Application No. 5275 of 2016, who is the subsequent purchaser.

14.1 Consequently, permitting the impugned criminal proceedings against the applicant (*in Criminal Misc. Application No. 5275 of 2016, who is the subsequent purchaser*) to continue constitutes a manifest abuse of the process of the Court, more particularly, when he is the subsequent purchaser by consideration.

14.2 So far as applicant in Criminal Misc. Application No. 7386 of 2016 is concerned, he is the so-called Power of Attorney holder of Dhanmai, daughter of late Jamshedji Kawasaji. She, indisputably, expired 17.07.1946, although, the so-called General Power of Attorney came to executed in favour of the present applicant on 25.08.1988, the record reveals that one of the signatories viz. Hormasji Jamshedji had expired on 06.06.1961 and another signatory *viz.* Dhanmai D/o. Jamshedji Kawasji expired on 17.07.1946, their signatures appear on the Power of Attorney and thus, it appears that a *prima facie* case is made against the present applicant inasmuch as, the said power of attorney *prima facie* appears to have been executed by dead persons as some of the signatories thereof and based on such Power of Attorney, six sale deeds have been executed by the by the present applicant (in Criminal Misc. Application No. 7386 of 2016).

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CONCLUSION:

15. Accordingly, the **Criminal Misc. Application No. 5275 of 2016** succeeds and is **allowed**. Accordingly, FIR bearing C.R. No. I-04 of 2016 registered with Chowk Bazaar Police Station, Surat, along with the charge-sheet and all consequential criminal proceedings arising therefrom, is hereby **quashed and set aside** strictly in so far as it pertains to the present applicant namely **Gunvantbhai Vallabhbhai Ambaliya** only.

15.1 Insofar as **Criminal Misc. Application No. 7386 of 2016** is concerned, the same is **rejected**. Interim relief, if any, shall stand vacated forthwith.

15.2 It goes without saying that the observations made herein above are only for the purpose of deciding the present applications and shall not come in way in any proceedings, pending or to be filed by any of the parties and the law shall take its own course.

15.3 Rule is answered accordingly.

15.4 **Direct service** is permitted.

(P. M. RAVAL, J)

MOHD SAIF ULLAH

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