NEUTRAL CITATION

2026:GUJHC:60315

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 25683 of 2017

With
R/CRIMINAL MISC.APPLICATION NO. 31152 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No
		No

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BIMALBHAI GANPATBHAI PAINTER
Versus
STATE OF GUJARAT & ANR.

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Appearance:
Criminal Misc. Application No.25683 of 2017
MR.NANDISH H THACKAR(7008) ADVOCATE for the Applicant(s) No. 1
ADVOCATE NOTICE SERVED for the Respondent(s) No. 2
MR ROHAN SHAH APP for the Respondent(s) No. 1

Criminal Misc. Application No.25683 of 2017
MR.DAIFRAZ HAVEWALLA, ADVOCATE for the Applicant(s) No. 1
ADVOCATE NOTICE SERVED for the Respondent(s) No. 2
MR ROHAN SHAH APP for the Respondent(s) No. 1

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

Date : 23/09/2026

ORAL JUDGMENT

1. The present applicants, before this Court, have invoked Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.', for short) with prayer to quash and set aside the FIR being I-C.R.No.255 of 2016 lodged before Umra Police Station, Surat for the offences punishable under Sections 406, 420, 465, 467, 468, 471 and 114 of the Indian Penal Code, 1860.

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2. From the reading of the entire FIR, which narrates the facts, rather roping in the present applicants before this Court, more particularly original accused nos.8 and 9 (the present applicants) and no averment with regard to forgery or cheating etc. have been made out.

2.1 What has been stated is that original accused nos.1, 2 and 3 had given general Power of Attorney to original accused nos.8 and 9 (present applicants) and had also entered into agreement-to-sale with possession receipts and had agreed to sell the property in question to original accused nos.8 and 9 (present applicants) to the tune of Rs.2,51,00,000/- of which advance payment of Rs.7,00,000/- was paid through cheque issued from Bank of Baroda, Mahidharpura Branch, except facts, there is nothing alleged in the complaint, however, at the last line of FIR, it is alleged that , " .... *thus, it is my complaint to investigate against all the afore-stated accused.* except this, no allegations are made.

3. Heard learned advocates for the respective parties, however, though advocate notice issued to respondent no.2 – original complainant, none appears.

4. Learned advocates for the applicants would submit that an FIR is nothing but an abuse of process of law since if one peruses the nature of FIR it only suggests that civil dispute has been given a criminal color and, therefore, have argued to allow the present applications.

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4.1 Learned advocates for the applicants vehemently submit that the ingredients of the alleged offences are conspicuously absent qua the present applicants. It is submitted that applicants are merely Power of Attorney holder and neither of them have derived any personal benefit, executed the sale deed, or pocketed the sale consideration, which was entirely received by the vendor. It is further submitted that the core dispute is purely civil in nature, stemming from family property disputes and mutation entries, which is already a subject matter of pending civil proceedings and that a criminal cloak is being given to a civil dispute merely to harass the applicants and exert pressure with respect to property shares.

5. Learned APP Mr.Rohan Shah for the Respondent State would submit that even if it is believed that through transactions the land has changed the owners, however, before entering into any transaction, it was the duty of the present applicants being power of attorney holder to verify the legal aspects for which they were authorised by the power of attorney. Thus, merely taking shelter by the applicants being Power of Attorney Holder, it does not allow the applicants to remain silent on legal aspects and as such the aspect of breach of trust cannot be overlooked and, therefore, present applications require to be rejected.

6. The case on hand, first needs to be verified through undisputed facts as they reveal from FIR are to the effect that one Balubhai Lalabhai Bhandari was declared as protected tenant on 22.11.1947 and on 14.04.1962 he had deposited

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Rs.150/- as decided by the competent authority and as such became owner of the disputed land under the provisions of Section 32(G) of the Tenancy Act. Thus, the land is new tenure land and in the year 2002 by registered sale-deed said land came to be sold to one Sevantilal Sanghvi for consideration of Rs.3,91,500/- wherein son of Balubhai Bhandari i.e. Prakashbhai Balubhai Bhandari has signed as witness.

6.1 Thereafter, on demise of Sevantilal Ravchand Sanghvi on 20.09.2006, names of his heirs i.e. wife and four sons were mutated and entry to that effect being Entry No.1872 was made on 08.07.2009. However, the said entry was cancelled by Mamlatdar, Surat against which the heirs of deceased Sevantilal Sanghvi preferred RTS Appeal No.93 of 2009 wherein Deputy Collector, City Prant, Surat confirmed and upheld the said Entry which came to be reflected in Village Form No.6 vide Entry No.2132 dated 23.09.2011.

6.2 It transpires that in the interregnum period, the agreement-to-sale with possession receipt and power of attorney was executed by accused nos.1, 2 and 3 whereas accused no.4 had affirmed execution of such agreement-to-sale, power of attorney and possession receipts. Thereafter heir of Sevantilal Sanghvi sold the said property to one Shaileshbhai Babulal Shah to the tune of Rs.71,70,000/- in the year 2009 and the said fact also reflected in village Form No.6 vide Entry No.1879 dtd.30.07.2009 which came to be cancelled by Mamlatdar which was, being challenged by Shaileshbhai Shah by filing RTS Appeal No.17 of 2012, came

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to be confirmed / upheld by Deputy Collector, City Prant, Surat vide order dated 20.07.2013 and entry to that effect was mutated vide Entry No.2248 dtd.31.07.2013.

6.3 Thereafter, in the year 2013, Shaileshbhai Babulal Shah sold the lands to Abhishek Nareshbhai Shah for consideration of Rs.1,75,50,000/- for which registered sale-deed dtd.30.04.2013 was executed by Shaishav Shaileshbhai Shah who was power of attorney holder of Shaileshbhai Babublal Shah and an Entry No.371 to that effect was noted down in Sub Registrar Office, Surat and mutation entry to that effect being No.2249 was recorded in Village Form No.6 on 02.08.2013.

6.4 It is alleged in the FIR that power of attorney in favour of complainant was executed on 19.12.2014 by Abhishek Shah pursuant to which notices were issued for title clearance to which original accused nos.1 and 6 raised objections and on inquiring it came to the knowledge that the above-stated transactions which had taken place has also taken place with the present applicants. Thus, from the reading of the FIR, it cannot be said that any offence has been committed by the present applicants, inasmuch as the FIR itself states that accused no.4 has also executed affidavit with an agreement to sale, possession receipts and Power of Attorney has been executed in favour of accused nos.8 and 9 (present applicants) and what has been stated therein is correct.

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Absence of Essential Ingredients of Alleged Offences :

A. Cheating (Section 420 IPC)

6.5 To bring home an offence of cheating under Section 420 IPC, the primary ingredient is a fraudulent or dishonest intention right at the inception of the transaction, coupled with a deceptive representation that induces the victim to deliver property.

- The allegations in the FIR merely state that Accused Nos. 1, 2, and 3 executed a General Power of Attorney and entered into an agreement-to-sale with possession receipts in favor of the applicants for a consideration of ₹2,51,00,000/-, of which ₹7,00,000/- was paid as advance via banking channels (cheque drawn on Bank of Baroda, Mahidharpura Branch).
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- There is no averment that the applicants made any false representation to the complainant, induced the complainant to part with property, or derived any unlawful personal gain. Merely entering into a commercial transaction or holding a Power of Attorney does not constitute deceit or cheating.

B. Criminal Breach of Trust (Section 406 IPC)

6.6 An offence under Section 406 IPC necessitates two essential conditions: (i) entrustment of property or dominion over property, and (ii) dishonest misappropriation, conversion

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to one's own use, or disposal in violation of a legal direction/contract.

- There was never any entrustment of property by the complainant to the applicants (Accused Nos. 8 and 9). The applicants acted in their capacity as purchasers/Power of Attorney holders in an arms-length transaction.

- The contention of the learned APP—that the applicants had a duty to verify legal title aspects and their failure to do so attracts "breach of trust"—is legally unsustainable. A failure to verify title details before entering into an agreement may at best affect the validity of a civil property transaction, but it does not equate to "dishonest misappropriation" under criminal jurisprudence. Criminal breach of trust requires *mens rea* (criminal intent) and direct entrustment, both of which are completely missing.

C. Forgery and Allied Offences (Sections 465, 467, 468, and 471 IPC)

6.7 To attract Sections 465, 467, 468, or 471 IPC, the prosecution must establish the execution of a "false document" as defined under Section 464 IPC—i.e., making, signing, or executing a document with the intention of causing it to be believed that such document was made or authorized by a person by whom or by whose authority it was not made.

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- The FIR contains no allegation that the applicants forged any signature, fabricated false documents, impersonated any party, or altered any official record.
- As settled by the Supreme Court executing a document claiming ownership of a property (even if the title is defective) does not per se amount to making a "false document" under Section 464 IPC, unless there is impersonation or forgery.

Civil Dispute Cloaked with a Criminal Colour :

6.8 The underlying context reveals a complex chain of land transactions, tenancy rights under Section 32(G) of the Tenancy Act, and contested mutation entries in Village Form No. 6 (Entry Nos. 1872, 2132, 1879, 2248, 2249) that have been subject to revenue appeals (RTS Appeals before the Mamlatdar and Deputy Collector).

- The core conflict relates to property titles, revenue entries, and family rights.

- The complainant has attempted to weaponize criminal law to resolve property title disputes. While a given set of facts may give rise to both civil and criminal proceedings, where the dispute is essentially civil in nature and no criminal intent is disclosed, permitting criminal prosecution is an abuse of process.

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Vague and Omnibus Allegations :

6.9 The FIR ropes in the applicants at the very end with a vague and general prayer: *"...thus, it is my complaint to investigate against all the afore-stated accused."*

- Aside from citing the transaction details, the complainant fails to ascribe any specific overt act, role, or dishonest intention to Accused Nos. 8 and 9. No transaction has been entered into between the informant and the present Accused Nos. 8 and 9 and there are prior transactions as well as subsequent transaction with other persons even after entering in to agreement to sale with present accused.

- It is a well-settled principle of criminal jurisprudence that vague, non-specific, and omnibus allegations in an FIR without attributing specific roles are liable to be quashed qua those accused (*State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335* - Category 1 & 7).

7. In light of the above judicial reasoning, no criminal offense is made out against the present applicants (Accused Nos. 8 and 9) under Sections 406, 420, 465, 467, 468, 471, and 114 of the IPC.

8. Accordingly, the application filed under Section 482 of the Cr.P.C. deserves to be allowed, and the FIR being I-C.R. No. 255 of 2016 registered with Umra Police Station, Surat, along with all consequential proceedings arising therefrom,

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stands quashed and set aside solely in respect of the present applicants (Original Accused Nos. 8 and 9).

9. Rule is made absolute to the aforesaid extent, qua the present applicants (Original Accused Nos. 8 and 9). Direct service is permitted.

(P. M. RAVAL, J)

MISHRA AMIT V.

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