**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

## Cr.M.P. No. 458 of 2013

1. Rt. Rev. Dr. P. C. Singh S/o Late B. Singh, Aged about 47 years, Bishop of Jabalpur Diocese, Church of North India, Bishop House, 2131 Napier Town, P.S. Omti, Jabalpur, Revenue & P.S. Disitt. Jabalpur ( M.P)
2. Suresh C. Jacob, S/o Late B. Jacob, Aged about 62 Years, Property Manager, Jabalpur Diocese, CNI, Bishop House, 2131, Napier Town, P.S. Omti, Jabalpur, Revenue & Police Distt. Jabalpur ( M.P)

**---- Petitioners**

**Versus**

1. Jasvant Martin Joseph S/o Late Martin Joseph, Aged about 69 Years, R/O D- 5/431, Tegore Nagar, Raipur, P.S. Civil Lines, Revenue & Police Disttt. Raipur (C.G.)
2. I. Kirten S/o Late R. Kirten, Aged about 69 Years, R/O 34/225 Katora Talab, Raipur, P.S. Civil Lines, Revenue & Police Distt. Raipur (C.G.)
3. Ajay John S/o A.K. John, Aged about 35 Years, R/O Civil Lines, Katora Talab, Raipur, P.S. Civil Lines Revenue & Police Distt. Raipur (C.G.)
4. H.H. Paul S/o Late H. Paul, Aged about 71 Years, R/O Near Bada Jhad, Shyam Nagar, Raipur, P.S. Civil Lines, Revenue & Police Distt. Raipur (C.G.)
5. Frankie Manuel S/o A.K. Manuel, Aged about 37 Years, R/O Raja Talab, Raipur, P.S. Civil Lines, Revenue & Police Distt. Raipur (C.G.)

**---- Respondents**

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| For Petitioners | : | Shri Surendra Singh, Sr. Advocate with Shri Anshuman Singh, Advocate for the petitioners. |
| For Respondents | : | Shri H. B. Agrawal, Sr. Advocate with Shri H. N. Das, Advocate for the respondents. |

**Hon'ble Shri Justice P. Sam Koshy**

**C A V ORDER**

**Passed On : 24/07/2015**

The petitioners through the instant Cr.M.P. have sought for quashment of the Complaint lodged by the Respondents and also the order dated 09.05.2012 passed by the Judicial Magistrate First Class, Raipur whereby the learned JMFC has directed for registration of the complaint made by the respondents and also taken cognizance against the petitioners for the offence under Sections 120B, 420, 467, 468 and 471 IPC. In furtherance to taking cognizance against the petitioners, the Court has also directed for issuance of bailable warrant against the petitioners.

**2.** According to the petitioners, no case as such is made out against the petitioners and the entire proceeding is nothing but a misuse of the process of law and also clear abuse of judicial mechanism particularly when prima facie, on the plain reading of the entire complaint and its contents on its face value itself would not constitute any offence under the provisions of IPC.

**3.** The entire dispute pertains to a property i.e. Nazul Plot No.17/2, Block No.18 situated at Byraon Bazar, Raipur measuring 14,810 sq. ft. For proper adjudication of the issue raised by the petitioners in this petition it would be appropriate to narrate the factual background of the entire case. The United Church of Northern India Trust Association (for short 'UCNITA') was incorporated under the provisions of Companies Act. The said Association was formed to establish, maintain, assist in establishing and/or maintaining, to assist and/or endow churches, chapels, societies, clubs, trusts, organizations, schools, colleges, hostels, boarding houses, hospitals, dispensaries, mission halls, prayer houses, parish rooms, churchyards, burial grounds, residences for clergy, evangelists, doctors, dispensers, nurses etc. That it is the intention of the United Church or Northern India Trust Association that the income and property of the Association whencesoever derived shall be applied solely towards the promotion of the objects and purposes of the Association as set forth in its memorandum of Association.

**4.** It is noteworthy to mention that originally the trusteeship was with the Board of International Missions of the Evangelical and Reformed Church. Subsequently, after the UCNITA was incorporated, the Deed of Transfer of trusteeship from the Board of International Missions of the Evangelical and Reformed Church was handed over to the Trustees of the UCNITA. In the course of transfer of trusteeship it was also assigned that the properties belonging to the said Society could be sold, leased, mortgaged or alienated in any manner whatsoever and as per the Deed of transfer of trusteeship, any property if sold, leased, mortgaged or alienated in any manner whatsoever, shall be so alienated according to the rules laid down by the Committee of management of "the Trust Association" and with the approval of the 3/4th majority of the members of Committee of Management of the said "Trust Association" or its successors.

**5.** The UCNITA had its own articles of association which has been enclosed as Annexure P-16. Clause 38 of the said articles of association envisages that the Management of the Association shall be vested in the Committee who in addition to the powers expressly conferred upon them by these Articles, shall have the entire control and management of the Association and may exercise all such powers and do all such acts and things as may be exercised and done by the Association as expressed in or implied by the Memorandum of Association. Similarly Clause 39 (2) also envisages that the Committee of Management shall also have the special power to purchase or otherwise acquire for the Association any property, rights or privileges moveable or immoveable of whatsoever nature which the Association authorised to acquire at such price and generally on such terms and conditions they think fit; and to sell or otherwise dispose of all or any portion of the whole of any part of the property of the Association as may be thought desirable.

**6.** The property involved in the instant petition was originally owned by the Board of International Missions of the Evangelical and Reformed Church but subsequently was transferred to the UCNITA by a Transfer Deed duly registered with the Registrar which has been enclosed as Annexure P-4. The said property is an old Bungalow which was originally used as the residence of the Principal of St. Paul's School, Raipur belonging to the UCNITA.

**7.** One Mrs. Fatima Chaudhary was appointed as a Principal of the said School and by virtue of her being the Principal, she was handed over the possession of the principal's residence. Though Mrs. Fatima Chaudhary retired from the post of principal on 30.06.1981, she did not vacate the said property and continued unauthorized occupation of the bungalow in spite of repeated request made by UCNITA.

8. Subsequently, the Committee of Management of the UCNITA passed a resolution to institute a legal proceeding against Mrs. Fatima Chaudhary against the illegal possession and for securing possession of the aforesaid property. Accordingly, an eviction suit was filed in August, 1986 against Mrs. Fatima Chaudhary which was registered as 43A/86. The said Fatima Chaudhary died on 31.12.1994 and after death of Fatima Chaudhary her legal heirs continued retention of the said house illegally and contested the Civil Suit against the UCNITA. Meanwhile, the unauthorized occupants i.e. the legal heirs of Smt. Fatima Chaudhary are said to have entered into an agreement on 02.04.1996 with one Ashok Agrawal for sale of the suit property. Since the said Ashok Agrawal could not get the Sale Deed executed, he filed a Civil Suit for specific performance. Since no positive relief could be got from the Civil Court, the said Ashok Agrawal filed a petition before the Chhattisgarh High Court

which was registered as W.P. No.3699 of 2004. However, the said writ petition was subsequently dismissed as withdrawn on 25.01.2005.

9. Meanwhile, one Jairam Das Kukreja wrote a letter to the Managing Director of UCNITA in the year 2004 offering his willingness to purchase the said property at a price of Rs.44,00,000 for which the said Jairam Das Kukreja also had a meeting with the members of the Committee of Management at Bombay on 27th August of 2004. The said Jairam Das Kukreja had offered his intention of purchasing the suit house knowing fully well the legal complications and the pendency of the Civil Suits. The said proposal was put in a meeting of the Committee of Management which resolved for seeking further consideration from the Jabalpur Diocese under whom the property was vide their letter dated 28th September, 2004 Annexure P-8.

**10.** It is pertinent to mention that it is this letter dated 28th September, 2004 which brings into action the role of the petitioners in the entire deal. Pursuant to the resolution of the Committee of management dated 27th August, 2004, a letter was issued by the UCNITA through its Managing Director to petitioner No.1 on 28th September, 2004 bringing to his notice the resolution dated 27.08.2004 along with copy of the same seeking for their response on the said offer made by Jairam Das Kukreja and also to take necessary action as is required. Based on the said direction received by the Committee of Management dated 28.09.2004, the Authorities of the Diocese i.e. petitioner No.1 in the capacity of the Bishop of the Jabalpur Diocese, Petitioner No.2 in the capacity of the property Manager of the Jabalpur Diocese and one M. K. Singh the Property Secretary of the Diocese held a meeting on 10th December, 2004 wherein Jairam Das Kukreja, the prospective purchaser was also called upon for negotiation and discussion.

**11.** The said Jairam Das Kukreja, after due consideration, enhanced his offer price from Rs.44,00,000 to Rs.70,00,000 for the said property and also agreed to make payment by demand draft. The petitioner No.1, in the capacity of the Bishop of the Diocese vide his letter dated 05.03.2005 (Annexure P-14) sent a letter to the Managing Director of the UCNITA bringing their notice the minutes of the meeting that was held between the proposed purchaser and the Property Committee of the Diocese on 10th December, 2004 and sought for the further guidelines and action on the part of the UCNITA for proceeding further to finalize the same with the proposed purchaser.

**12.** Meanwhile, immediately after the deal was struck at Rs.70,00,000, the proposed purchaser i.e. Jairam Das Kukreja made an application to the Collector, Raipur for permission to purchase the aforesaid property. In between, an amicable settlement was also struck between Jairam Das Kukreja and Mr. Amit Chaudhary, the legal heir of Mrs. Fatima Chaudhary and another mutual settlement was also entered into between Jairam Das Kukreja, the proposed purchaser and Mr. Ashok Agrawal. Based upon the said agreement, the Civil Suits and the Writ Petitions earlier filed were withdrawn.

**13.** The UCNITA in response to the letter dated 05.03.2005 (Annexure P/14) held a meeting on 8th March, 2006 at Mumbai wherein they accepted the proposal received from the Diocese of Jabalpur. The Committee of Management further resolved to authorize Petitioner No.1 to execute the agreement in favour of the proposed purchaser. In the subsequent meeting of the Committee of Management held on 25.08.2006, it was further resolved that a power of attorney should be executed in favour of petitioner No.1 for executing the Sale Deed for and on behalf of UCNITA. Accordingly, the power of attorney was executed on 3rd October, 2006 (Annexure P-18).

**14.** The power of attorney dated 03.10.2006 executed in favour of Petitioner No.1 was for the specific purpose that was to sign/present/admit and register the Sale Deed before the Sub-Registrar of Raipur in favour of Jairam Kukreja and also to issue no objection certificate or an affidavit to Jairam Kukreja for entering his name in the revenue record as well as in the Municipal Corporation record. The power of attorney clearly enumerated the fact that the same shall become inoperative and ineffective immediately after executing the sale deed and after issuance of no objection certificate in respect of change of name.

**15.** Based upon the said power of attorney, Sale Deed was executed between UCNITA as the first party and M/s. Kukerja Builders and Co. as the second party on 28.11.2006. The said Sale Deed was executed by petitioner No.1 on behalf of the UCNITA in the capacity of an attorney holder. Pursuance to the Sale Deed dated 28.11.2006, the purchaser namely Mr. Jairam Kukreja made the entire sale consideration in favour of the UCNITA at Bombay and the UCNITA in turn invested the entire money at Bombay.

**16.** However, after about almost two years time, suddenly an FIR was lodged under Sections 420, 647, 468, 471 and 120 B of IPC in Crime No. 226/2008 at Police Station Gole Bazar, District Raipur by one Shri William Salomon alleging that the Petitioner, the other members of the Committee of Management of the Diocese and the purchaser of the said property have played fraud in as much as they have fraudulently created certain documents and have got the disputed property sold. The Police authorities on registering the said FIR investigated upon the matter and submitted a final report before JMFC, Raipur on 19.10.2008 Annexure P/26 stating that no offence whatsoever is made out against the Petitioner and the other persons and the Sale Deed executed on behalf of UCNITA in favour of Jairam Kukreja was a valid transaction and no fraud/misrepresentation/cheating etc. was detected in the course of investigation.

17. It is pertinent to mention at this juncture that the said Sale Deed dated 28.11.2006 was not challenged by any person before any Court of law and in between the Collector Stamp Raipur initiated proceedings against the purchaser Jairam Kukreja for getting the Sale Deed executed with deficient stamp duty and less registration fees. The Collector Stamp Raipur passed an order on 23.06.2008 directing the purchaser Jairam Kukreja to make good the deficiency of Rs.16,37,526/- towards stamp duty and Rs. 1,32,604/- towards registration fees. The said deficiency was duly made good on 25.06.2008 by the said purchaser (Annexure P/23).

18. After the police authorities had closed the matter holding that no case is made out, the Respondents filed a compliant dated 07.02.2009 Annexure P/27 to the JMFC, Raipur making the same set of allegation against the Petitioner and others on which the police had already concluded that no offence is made out. It is this complaint which is under challenge in the instant case.

19. In the present complaint also, like on the earlier occasion, the respondents are alleged to have again played mischief and fraud on the part of the petitioners in the execution of the Sale Deed dated 28.11.2006 with an intention of personal gain. According to the respondents, the Committee of Management of the UCNITA had got prepared a fake

resolution so far as the disputed property is concerned and on the basis of the same, it was resolved to sell the property to Jairam Kukreja for an amount of Rs.70,00,000 which, in turn, was forwarded to the Property Management Committee of Jabalpur Diocese and the UCNITA fraudulently got prepared a special power of attorney in favour of Petitioner No.1 so as to get the Sale Deed executed. It was alleged in the complaint that the fraud played by the respondents and the other alleged accused persons was without any knowledge of the local members of Jabalpur Diocese and that the entire Sale Deed has been fraudulently got executed with a clear intention of cheating the members of the Diocese. It was further contended that the disputed property has been sold to Jairam Kukreja and the suit property has been got registered under valuing the actual value of the property and in this way, they have cheated the Govt. also. It was further alleged that since Petitioner No.1 was not a responsible member of the said Association, he could not have been appointed as an attorney holder and the same has been done with a clear intention of sharing the sale consideration among themselves for which the power of attorney was prepared fraudulently and mischievously in favour of petitioner No.1. Thus, the Respondents by the complaint sought for initiating criminal proceeding against the Petitioners and other accused persons for the offence under Sections 402, 467, 468, 471 and 120B of IPC.

20. According to the counsel for the petitioners, a plain reading of the complaint and the statements of the complainant party recorded before the Court below would reveal that the entire case made out by the respondents is purely of civil nature and does not have any ingredients of a Criminal offence particularly under the provisions of the Indian Penal Code. According to the senior counsel appearing for the petitioners, even

accepting the entire version of the respondents as stated in their complaint to be true, the case of forgery or for that matter cheating is not made out and the complaint lacks the ingredients of forgery as well as cheating and therefore, prima facie, no case whatsoever is made out against the petitioners. It was contended that the petitioners in the instant case have acted at the instance of UCNITA, therefore, they cannot be blamed in any manner for the said Sale Deed and that there has been no deception whatsoever in any manner so as to bring the case under the definition of forgery or cheating. Counsel for the petitioners submitted that the entire complaint itself has been lodged with an ulterior motive of blackmailing the petitioners as is evident from the series of letters written by the complainants wherein they in very categorical terms on many occasions had written to the Committee of Management of the UCNITA raising various demands to be met and in case, if the demand is met, they would immediately withdraw the complaint lodged in the Court. On this term itself, the complainants kept avoiding recording of the statement on their part for a pretty long time and finally, when the Committee of Management of the UCNITA did not accept the demand, they went on by recording the statement and the JMFC ordered for registration of complaint against the petitioners and the other accused persons and also ordered for issuance of bailable warrants against them. The said order dated 09.05.2012 is also under challenge in the present petition.

21. According to the counsel for the petitioners, when prima facie, a bare perusal of the complaint itself reveals that no case is made out, why should the petitioners be forced to face the trial and undergo the trauma of trial which will take a long time to conclude and all this period the petitioners would be subjected to harassment for no fault and reason on

their part whatsoever. According to the Senior Counsel, the entire action on the part of the respondents in lodging a complaint and subsequently floating compromise letters raising demands with a condition that if the demands are met, the complaint case shall be withdrawn and when could not succeed, they proceeded with the Criminal complaint and somehow got the case registered and summons have been ordered to be issued which is nothing but a clear abuse of process of law. The senior counsel stressed hard on the fact that all the allegations levelled against the petitioners and the other accused persons do not constitute an offence nor does the document accompanying the complaint or for that matter the statement recorded along with the complaint prima facie make an offence under the criminal law. He further submitted that the Sale Deed dated 28.11.2006 has till date not been questioned by any of the parties before any of the Court of law and unless and until the said Sale Deed is struck down by any Court of law or in the course of deciding the veracity of the Sale Deed, the Court reaches to the conclusion that the Committee of Management of UCNITA has committed fraud or mischief, the respondents do not have any right whatsoever in filing the complaint. According to the counsel for the petitioners, the Court below also has erred in law in not appreciating these facts and registering the complaint case in a mechanical manner without application of mind, and hence sought for quashment of the complaint and the order of the Court below ordering registration of complaint.

22. In support of their contention counsel for the petitioners relied upon the following judgments of the Hon'ble Supreme Court:

(2000) 3 SCC 693 (G. V. Rao v. L.H.V Prasad and Others) and (2000) 4 SCC 168 (Hridaya Ranjan Prasad Verma and others v. State of

Bihar and another), AIR 1998 SC 128 (M/s Pepsi Foods Ltd. & another Vs. Special Judicial Magistrate and others), AIR 2004 SC 4674 (Adalat Prasad Vs. Rooplal Jindal and Ors.), AIR 2005 SC 9 (M/s Zandu Pharmaceutical Works Ltd. & Ors Vs. Md. Sharaful Haque & Ors), AIR 2011 SC 20 (Iridium India Telecom Ltd. v. Motorola Incorporated & Ors.), AIR 2013 SC 506 (Sathish Mehra Vs. State of N.C.T. of Delhi and Anr) and AIR 2014 SC 1106 (Umesh Kumar Vs. State of Andhra Pradesh).

**23.** Opposing the petition counsel for the respondents submited that from the plain reading of the complaint itself establishes the *primafacie* case against the Petitioners and the other accused persons and the present petition deserves to be rejected for more than one reason. According to the respondents, the instant petition under section 482 of Cr.P.C. is not maintainable for the reason that a Criminal Revision has already been preferred challenging the same impugned order which is pending before the 3rd Additional Sessions Judge at Raipur which has been filed by one of the accused person namely M.K.Singh. According to the counsel for the respondents, since the said Criminal Revision filed on behalf of one of the accused persons is already pending before Additional Sessions Judge Raipur, it would not be appropriate at this juncture for this Court to invoke extra ordinary power under section 482 of Cr.P.C. scrutinizing the veracity of the complaint and the order of the lower Court registering the complaint as any finding given by this Court may have an adverse impact directly or indirectly to the Criminal Revision pending before 3rd Additional Sessions Judge Raipur and thus prayed for rejection of the petition.

**24.** Counsel for the respondents further relying upon the judgment of the Supreme Court in the case **Amit Kapoor vs. Ramesh Chander and another (2012) 9 Supreme Court Cases 460** submitted that the petition is devoid of substance for the reason that the petition at this stage is too premature as the Court has not applied its mind to look into the aspects as to whether the petitioners could be convicted with the available material in the complaint and the evidence which was adduced at the time of filing of the compliant. According to the counsel for respondents, the Court has only looked into the fact whether *prima facie* with the material available on record a case of cognizable offence is made out or not?. If prima facie there are substance and material on the basis of which the Court below registers the compliant, the same can not be held to be bad in law for the reason that the petitioners would still have all the opportunities to prove their innocence by leading proper cogent evidence to demolish the case of the complainant. This Court at this juncture should not conduct a roving enquiry to ascertain the innocence of the petitioners and hence prayed for rejection of the present petition.

25. According to the counsel for the respondents, the fact that there is a prima facie case made out against the petitioners is established from the order dated 06.11.2012 passed in M.Cr.C(A) No.647 of 2012. According to the counsel for respondents, vide the above referred order dated 06.11.2012 in a case where one of the accused persons had sought for anticipatory bail raising these very grounds that which has been raised in the instant petition for grant of anticipatory bail but the same was not acceptable to the Court and taking note of the act, action and misdeed on the part of the petitioners, the Court had rejected the said application. This by itself shows that the Court had found, prima facie, an element of offence in the compliant and thus, it is established that there is prima facie case

made out in the complaint and therefore prayed for rejection of the petition.

26. Further counsel for the respondents referred to the documents in the petition and submitted that foremost fraud with the petitioners has committed is the fact that they have sold the property which otherwise is worth more than Rs. 3 crores for substantially reduced price of Rs. 70 lakhs and fraud thus has been committed with a clear intention of personal gains to be made by the persons involved in the transaction. Counsel for the respondents alleged that the resolution of the UCNITA pertaining to the disposal of the disputed property ought to have been approved by 3/4th majority of the members of Committee of Management of the said UCNITA. Since the resolution pertaining to the disposal of the disputed property was not in accordance with the Deed of Transfer of Trusteeship, the action on the part of the petitioners displays foul play. Based on the said illegal resolution initiated by the Committee of Management of UCNITA, the case was forwarded to the Jabalpur Diocese and the petitioner along with other accused persons further connived in the commissioning of the offence.

27. According to the counsel for respondents, a perusal of the entire chain of action and comparing the same with the provisions of the Deed of Trusteeship would reflect that the petitioner and the other accused persons have committed wrong at every stage of the proceedings. He further contended that the entire action made by the accused persons is the part of a larger conspiracy between different groups in the UCNITA and in the process the members of the UCNITA are being defrauded of their properties and further the sale consideration for the said disputed property is also disproportionately less as compared to its market value. According to the counsel for the respondents, the Committee of Jabalpur Diocese is

entirely different from the Committee of Management of UCNITA. According to the counsel for the respondents, Annexure A/9 (with the petition) itself is a fraudulent document as the same does not have the force of law as the same was never passed in the manner as is required to a Company incorporated under the Companies Act.

28. According to the counsel for the respondents, the power under Section 482 is to be sparingly used and the inherent powers under this section of Cr.P.C. also should be exercised cautiously. According to the respondents' counsel, the Court has not committed any wrong in ordering for the registration of the complaint for the reasons that even if there are only material allegations against the accused persons of having committed the offence even then the Court would not interfere with the matter, as the final test of guilt can be proved either way, only by putting the matter to trial. At the time of lodging of the complaint and the registration of complaint all that the Court has to see is the material on record and the facts would be compatible with the innocence of the accused or not.

**29.** According to the respondents' counsel, the entire act on the part of the accused person is nothing but the hidden design of a conspiracy for disposing of the disputed property. The respondents counsel has tried to canvass in respect of the complaint stating that the entire execution of the Sale Deed is bad in law for the reason that right from the stage of execution of the special power of attorney in favour of the petitioner No.1 is illegal and contrary to the provisions of law and has been done behind the back of the members of the UCNITA who have not been taken into confidence while taking the decision for disposing of the said property.

**30.** Counsel for the respondents relies upon the decision of the

Supreme Court in the case of Medchl Chemicals & Pharma (P) Ltd. Vs. M/s Biological E. Ltd. & Ors. reported in **2000 (II) MPJR 334** wherein it has been held that:

> "Quashing of complaint at the initial stage it must be treated as rarest of rare and quashing of complaint is an exception rather a rule."
>
> Ingredients of alleged offences not totally absent in the complaint. Availability of civil remedy is not a bar for pursuing criminal remedy. Quashing of complaint is improper."

**31.** However, this Judgment also holds that in the event the Court on perusal of the complaint comes to a conclusion that the allegation levelled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation for the Court to rise upto the expectation of the people and deal with the situation as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount. This fact is evident from the nature of conditional letters issued by the complainants to the petitioners and the Management of UCNITA referred to above.

**32.** Further referring to the judgement of the Supreme Court reported in **(2009) 7 SCC 194** (Ram Babu v. State of Madhya Pradesh & Ors.) counsel for the respondents submitted that in the said judgment the Supreme Court has reiterated the principle that the High Court should not, except in extraordinary circumstances, exercise its jurisdiction under Section 482 Cr.P.C. so as to quash the prosecution proceedings after they have been launched.

**33.** Counsel for the respondents also relied upon the decision of the

Supreme Court reported in **(2014) 3 SCC 389** (Vijayander Kumar and Others v. State of Rajasthan and another) wherein it has been held that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant/complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose a criminal offence or not.

**34.** However, the nature of complaint, on perusal, would show that in the instant case, there is no challenge whatsoever to the alleged sale deed executed. Further, the present petitioners have acted with all bona fide on specific instructions and with a special power of attorney given in favour of petitioner No.1 which would clearly demonstrate that the nature of allegation even if accepted would only be a case of civil nature and not a criminal offence. Thus, the ratio laid down in the above referred judgments cited by the counsel for the respondents would not come to the aid of the respondents.

**35.** Taking into consideration the statements and the arguments put forth by the counsel appearing on the either side certain facts which are not in dispute in the instant case :-

(i) That the property in dispute along with congregation of the Church of North India (CNI) of which the petitioners as well as the respondents are the members is under the control of the UCNITA which is registered as Company under the provision of Companies Act having its own articles of associations. The articles of associations of the UCNITA has categorically enunciated that the Committee of Management of the UCNITA shall have the right to acquire as well as dispose the property on behalf of the UCNITA.

(ii) Another admitted position from the pleadings that have come on record is that the petitioners in the instant Cr.M.P. have acted on the instructions of the Committee of Management of the UCNITA at Bombay and that the complainant has not been able to substantiate any allegations against the petitioners individually of having voluntarily acted in a manner contrary to the instructions governing the UCNITA. Further from the record it is also evidently clear that the Committee of Management at Bombay for their convenience had given written instructions to the petitioners firstly to consider the proposals moved by Jairam Kukreja and secondly to give recommendation after further negotiating with the said Jairam Kukreja. Further it was at the instructions of the UCNITA the petitioners had called upon Jairam Kukreja for negotiation and thereafter intimated their decisions to the concerned authorities.

(iii) Another fact which requires to be highlighted is the fact that the alleged act of executing the sale deed by petitioner No.1 again was at the instance of UCNITA which had executed special power of attorney in the name of the petitioner No.1 for specific purpose that of entering into the sale agreement with the purchaser of the said property to Jairam Kukreja vide the power of attorney dated 28.05.2006.

(iv) Further if we peruse the record, another admitted fact is that even today neither the sale deed executed by the Petitioner No.1 on 28.11.2006 nor the power of attorney executed by the UCNITA on 25.08.2006 in favour of petitioner No.1 has been challenged before any Court of law and by efflux of time the power of attorney as well as the Sale Deed has attained its finality and for all practical purpose the said document i.e. the sale deed dated 28.11.2006 is proper, legal and valid. Unless and until the sale deed or the power of attorney is declared null and void, the transaction so made cannot be said to be illegal.

(v) Another undisputed fact in the instant case is that the complaint made by the complainant for the first time was on 07.09.2009 i.e. almost after three years from the date the sale deed and the power of attorney had been executed as such the complaint suffers from delay and laches.

(vi) Another admitted position on the fact of the present case is that for the same set of fact there was an FIR lodged on 29.07.2008 and the matter was already thread bare investigated upon by the Police authorities and on investigation, no criminal offence was found to be made out on the complaint. Accordingly, the Police authorities had sent a closer report on the compliant vide order dated 19.10.2008.

**36.** The closure report submitted by the police authorities have also not been questioned by the respondents before any Court of law and the same thus has attained finality. From the nature of the complaint and deposition of the complainant and witnesses, it clearly reflects that except for the bald allegation against the petitioners, of being one of the beneficiaries of the sale transaction, there is no iota of evidence to substantiate this contention. On the contrary, there are evidences, of the entire sale consideration being paid at Bombay, to UCNITA, the main controlling body, as is reflected from the different photocopies of the bank draft deposited by Jairam Das Kukreja. The main allegation of the complainants/respondents in respect of petitioners is of fraud and mischief with an intention to take undue advantage of the sale proceed. However, from the record it appears that the entire complaint and proceedings initiated on the complaint was with mala fide intention and the malafide on part of the complainants is further reflected from the letters, Annexure P/28 to P/31 dated 05.07.2011, 16.07.2011 and 16.08.2011 written by the complainants. It shows that the complainants were not serious on the complaint but were trying to bargain with the higher authorities of the UCNITA at Bombay as is evident from Annexures P/28 to P/31, all the letters were made to settle the matter as per the demand made by the complainants with a condition that in the event of compromise the complainants would not pursue with the complaint case.

37. This by itself means that the complainants did not intend to file complaint at the first instance and were trying to get the matter settled and in each of the letters, the complainants have specifically undertaken for withdrawal of the complaint without further pursuing it. This is nothing but an act of blackmailing and therefore, the same can not be said to be a document with bonafide intention and is nothing but a sort of threatening being given to the alleged accused persons. So far as Annexure P/9 being a forged document is concerned, a perusal of the same would reveal that it is nothing but an act on the part of the petitioners in pursuance of the letter dated 28.09.2004. That vide letter Annexure P/9 no decision has been taken but only the minutes of the meeting that took place on 10.12.2004 was reproduced. Subsequently, on 05.03.2005 (Annexure P/14) final resolution from the Bishop, Diocese of Jabalpur was issued to UCNITA, Bombay i.e. Head Quarter of UCNITA and they were invited to discuss about resolution regarding the properties in question. Annexure P/14 clearly reflects that all the members of Diocese were apprised with

the facts of the case and thereafter, it was resolved to sell the property to Jairam Das Kukreja for Rs. 70 Lakhs. Annexure P/7, P/15 and P/17 do not reflect requirement of 3/4th majority of its members.

**38.** Recently, the Supreme Court in the case of **Gangadhar Kalita Vs The State of Assam and others (AIR 2015 SC 2304)** has held that where complaints filed in respect of property disputes are of civil in nature only with an intention to harass the accused,it is well within the jurisdiction of the High Court to exercise its power under section 482 of the Code to quash the criminal proceeding. What is to be seen at this juncture would be whether the allegation made in the complaint is taken at its face value and accepted in entirety, prima facie the commission of criminal offence is not disclosed. In the instant complaint also what we have to see now is whether on the basis of the materials provided before the Court at the time of filing the complaint and recording of the statements, there are materials from which prima facie criminal offence is made out in respect of sections 420, 467, 468 and 471 of IPC. As far as section 420 is concerned, the complaint is alleging an act of deceiving, however, no deception has been found to be established in the complaint. Likewise, so as to attract the offence under sections 467 and 468 also there has to be clearcut act of forgery on the part of the petitioners. In the instant case no forgery is said to have been played by the petitioners. For the reasons that petitioner being the Bishop of the Diocese, Jabalpur was duly authorised to submit the report in compliance to the demand made by UCNITA. The complaint does not even reflect any sort of cheating or forgery. So far as section 471 is concerned, the complaint prima facie also does not disclose any material to hold as to which is the forged document particularly on the part of the petitioners for making out an offence under section 471 of the IPC.

Prima facie, reading of the complaint itself would show that all the necessary ingredients required for instituting an offence of cheating, dishonesty and forgery under Sections 420,467, 468 and 471 of the IPC are missing.

**39.** Further on reading the complaint what reflects is that the nature of dispute is of purely civil nature where the complainant perhaps appears to be more aggrieved with the civil transaction of the property involved in the dispute being sold by the UCNITA to Jairam Das Kukreja. Thus, keeping in view the judgment of the Supreme Court in the case of **Gangadhar Kalita (supra)** and also in the case of **Ramesh Dutt Vs the State of Panjab, 2009 Vol.15 SCC 429** where the facts are somewhat similar, the Supreme Court has held that only because the appellants are said to have personalized portion of the property without having complete ownership over it, by itself, does not satisfy the ingredients of sections 467, 468 and 469 of the IPC.

**40.** So far as whether the act on the part of the petitioners would fall within the ambit of cheating or fraud is concerned, the Hon'ble Supreme Court in the case of Hridaya Ranjan Prasad Verma and others v. State of Bihar and another reported in **(2000) 4 SCC 168** held as under:

> "On a reading of the complaint it is clear that the main offence alleged to have been committed by the appellants is "cheating" punishable under Section 420 IPC. Cheating is defined in Section 415 of the Code. The Section requires-
>
> (1) deception of any person;
>
> (2)(a) fraudulently or dishonestly inducing that person
>
> (i) to deliver any property to any person, or
>
> (ii) to consent that any person shall retain any property; or
>
> (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that

person in body, mind, reputation or property.

On a reading of the Section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would ;not do or omit to do if he were not so deceived.

Criminal prosecution for cheating cannot be invoked unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence."

**41.** The said view has been reiterated by the Supreme Court in the case of Iridium India Telecom Ltd. v. Motorola Incorporated & Ors. reported in **AIR 2011 SC 20**. The Supreme Court in **(2000) 3 SCC 693** (G. V. Rao v. L.H.V Prasad and Others) while dealing with the issue as to what would be the essential elements for constituting the offence under Section 415 IPC held as under:

> "In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person, must be established. This part speaks of intentional deception which must be intended not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind, reputation or property. The intentional deception presupposes the existence of a dominant motive of the person making the inducement. Such inducement should have led the person deceived or induced to do or omit to do anything which he would not have done or omitted to do if he were not deceived."

**42.** So far as the issue whether the High Court in exercising its power under Section 482 Cr.P.C. can entertain a petition seeking for quashment of the complaint is concerned, the said issue also has by now been settled in a catena of decisions of the Supreme Court. The Supreme Court in the case of M/s Pepsi Foods Ltd. & another Vs. Special Judicial Magistrate and others reported in **AIR 1998 SC 128** held as under:

"No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under S. 482 of the Code or Art. 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial."

**43.** The same view has further been reiterated in **AIR 2013 SC 506** (Sathish Mehra Vs. State of N.C.T. of Delhi and Anr) wherein the Supreme Court again in very categorical term has held as under:

"This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused."

**44.** Further in **AIR 2014 SC 1106** in the case of Umesh Kumar Vs. State of Andhra Pradesh the Supreme Court again has held as under:

"Law does not prohibit entertaining the petition under S. 482, Cr.P.C. for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the Court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge."

**45.** The Supreme Court again in **AIR 2005 SC 9** (M/s Zandu Pharmaceutical Works Ltd. & Ors Vs. Md. Sharaful Haque & Ors) has held that:

"Exercise of power under Section 482 of the Code in case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice."

In the said judgment reiterating the law laid down by it in the case of

R.P. Kapoor v State of Punjab reported in AIR 1960 SC 866 the Supreme Court held that the High Court in exercising its power under Section 482 Cr.P.C. can quash a criminal proceeding in the following three categories:

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
(ii) where the allegations in the first information report or complaint taken at the face value and accepted in their entirety do not constitute the offence alleged;
(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

**46.** In AIR **2004 SC 4674** (Adalat Prasad Vs. Rooplal Jindal and Ors.) the three Judges Bench of the Supreme Court held as under:

> "It is true that if a Magistrate takes cognizance of an offence issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Ss. 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking S. 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate Criminal Courts, the remedy lies in invoking S. 482 of Code."

The said position of law squarely applies in the present case also and therefore this Court would have all the powers under Section 482 of Cr.P.C. to decide the matter raised by the petitioners.

**47.** Based upon the judgements referred above if the allegations levelled against the petitioners in the complaint are looked into, it clearly reflects that there is no element of deception or cheating pointed out against the present petitioners nor does the complaint shows any sort of inducement on the part of the present petitioners inducing the complainants or for that matter the purchaser of the said property in the instant dispute.

**48.** From the given facts and circumstances of the case and taking the entire allegations levelled by the complainants in the complaint, it clearly establishes the fact that the allegations on the face value itself do not constitute a criminal offence particularly against the present petitioners and that the same has been instituted with a mala fide intention as is evident from the documents Exhibits P-27 to P-31.

**49.** For the foregoing reasons enumerated in the preceding paragraphs and also keeping in view the judgements of the Hon'ble Suprme Court cited and referred to above, this Court is of the opinion that the allegations levelled against the petitioners in the complaint do not constitute a criminal offence.

**50.** Accordingly, the instant petition is allowed. The impugned complaint lodged by the respondents against the petitioners and also the order of the Court below initiating proceedings against the petitioners stand quashed.

**51.** No order as to costs.

Sd/-
**(P. Sam Koshy)**
**Judge**

Bhola