IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.12.2014

Date of decision: 05.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Crl.O.P. Nos.8645 of 2014 and 4739 of 2011

Crl.O.P.No.8645 of 2014

1.M/s.Triven Garments Ltd.,
represented by its Managing Director,
L.S.Abinesh Babu,
No.11, Vijayaraghava Road,
T.Nagar, Chennai - 600 017.

2.L.S.Abinesh Babu ... Petitioners

vs.

1.State represented by
the Sub-Inspector of Police,
Team-18A, Central Crime Branch,
Vepery, Chennai - 600 007.

2.A.M.Mohan

3.The Assistant Director,
Directorate of Enforcement,
Shastri Bhavan,
3rd Floor, 3rd Block, No.26,
Haddows Road,
Chennai - 600006. ... Respondents

Crl.O.P.No.4739 of 2011

A.M.Mohan ... Petitioner

vs.

1.The Director General of Police,
Government of Tamilnadu,
Chepauk, Chennai.

2.The Commissioner of Police,
Greater Chennai City,
Chennai - 600 002.

3.The Deputy Commissioner of Police,
Central Crime Branch,
Greater City, Chennai - 600 008. ... Respondents

PRAYER : Criminal Original Petition No.8645 of 2014 filed under Section 482 of the Code of Criminal Procedure praying to call for the records connected with F.I.R. dated 30.9.2011 in Crime No.450 of 2011 on the file of the first respondent, State represented by the Sub-Inspector of Police, Team-18A, Central Crime Branch, Vepery, Chennai - 600 007 and quash the same.

Criminal Original Petition No.4739 of 2011 filed under Section 482 of the Code of Criminal Procedure praying to transfer the investigation on the file of the third respondent with respect to the complaint dated 2.7.2010 to any other competent agency or CBI and subsequently direct them to file periodic reports before this Court.

Mr.P.L.Narayanan	:	For petitioner in Crl. O.P.No. 8645 of 2014
Mr.Balaraman for M/s.Nathan & Associates	:	For petitioner in Crl.O.P. No.4739 of 2011 and 2nd respondent in Crl.O.P. No.8645 of 2014
Mr.A.N.Thambidurai, Addl.Public Prosecutor	:	For respondents 1 to 3 in Crl.O.P.No.4739 of 2011 and R1 in Crl.O.P.No.8645 of 2014.
Mr.M.Dhandapani, Special Public Prosecutor	:	For R3 in Crl.O.P.No.8645 of 2014
M/s.Yuvaraj & Mohankumar	:	For R4 in Crl.O.P.No.4739 of 2011

COMMON ORDER

Criminal O.P.No.8645 of 2014 is filed to quash the F.I.R in Crime No.450 of 2011 on the file of the first respondent. The second respondent in Crl.O.P.No.8645 of 2014 filed Crl.O.P.No.19095 of 2010 before this Court seeking for a direction directing the Commissioner of Police, Greater Chennai City, to register the case on the complaint dated 2.7.2010 given by him. The said Criminal O.P.No.19095 of 2010 was disposed of by order of this Court dated 08.12.2010 with a direction to the Deputy Commissioner, City Crime Branch, Chennai, to conduct enquiry on the complaint pending with the CCB Team -1, Chennai and initiate action if any cognizable offence is made out as per section 154(1) of Cr.P.C. Thereafter, a case was registered by the first respondent in Crime No.450 of 2011 on the file of the Central Crime Branch against 20 persons for offences under sections 419, 420, 465, 467, 468, 471, 474 and 120(b) IPC. The petitioners are A.1 and A.2 in the said crime and they filed the present petition to quash the F.I.R.filed against them.

2. A reading of the F.I.R. would disclose that three or more sets of offences alleged to have been committed by various accused at various point of time were clubbed in the said Crime Number. The defacto complainant/second respondent has no personal stake in the property in respect of which the alleged offences were said to have been committed by the accused. Nevertheless, as a probono public, having realised that fraud has been committed by the petitioners, he lodged a complaint which resulted in the registration of crime against the petitioners and 18 others.

3. The first instance of crime as per F.I.R. is as follows:-

(i) The second petitioner is the Director of M/s.Altriven Steels Pvt.Ltd., Anna Nagar, Chennai and he entered into a Memorandum of Understanding with M/s.IVRCL, a public limited company for the purchase of lands in and around Sandavellur Village, Sriperumbudur Taluk, Kancheepuram District. The second petitioner approached the second respondent/defacto complainant in the year 2009 for purchasing those lands through him in the said village promising him that due sale consideration would be paid to the owners of the land after the execution of the sale deeds and transfer of patta in the name of the company. The defacto complainant/second respondent herein reposed trust on the second petitioner and agreed to act as a middleman for the purchase of lands belonging to various persons at the request of the defacto complainant and the owners of the lands executed registered power deeds in the name of the Director of M/s.Altriven Steels Pvt.Ltd., by receiving a paltry sum advanced. On the strength of such power deeds, the second petitioner as power agent of those owners of the properties executed the sale deeds in favour of M/s.IVRCL and received the entire sale consideration as per the sale deeds. However, the second petitioner and other Directors of M/s. Altriven Steels Pvt.Ltd., failed to pay the balance sale consideration to the owners, namely, the principals who executed powers in favour of the second petitioner as promised though the second petitioner received full sale consideration from the purchaser namely, M/s.IVRCL, and clandestinely diverted the said funds for the purpose of illegally grabbing the lands of persons who left no legal or legal representatives or who are residing abroad. The owners who executed power in favour of the second petitioner on the assurance given by the second respondent/defacto complainant asked the defacto complainant to pay the balance sale consideration and therefore, the second respondent/defacto complainant lodged a claim petition before the arbitrators as per the agreement he entered into with the petitioners herein and also filed a petition before this Court in O.P.No.280 of 2010 for appointment of third arbitrator u/s.11 and for other reliefs u/s.9 in O.A.No.690 of 2010 and the same are pending adjudication.

(ii) The second petitioner having realised that the defacto complainant, the second respondent has taken legal steps to blackmail and to prevent the second respondent from proceeding further, instigated his brother Nagarajan to file a false criminal case against the seocnd repsondent which was registered as Crime No.96 of 2010 on the file of 4th Team, Central crime Branch, Egmore, Chennai and the second respondent filed Criminal O.P.No.8575 of 2010 and to quash the same and the same is pending.

4. The second instance of criminal offence is as follows:-

(i) The second petitioner floated M/s.Triven Garments Pvt Ltd Company in the year 1995 and later converted the said private limited company into a deemed public limited company and the 2nd petitioner is the Managing Director, his father, Father-in-law and his friend Vijayakumar are Directors. The said company approached M/s.Global Trust bank Ltd., later merged with Oriental Bank of Commerce, opened a Letter of Credit (LC) in favour of ERSTE Bank, London to the tune of 2.50 Million D.M. (Deutsche Mark) amounting to Rs.6.25 Crores in Indian Currency as per the exchange rate prevailing at that time by mortgaging the properties of the company situated in Villivakkam. The said Bank sanctioned Letter of Credit and the amount covered under the Letter of credit was to be used for investing in M/s. Triven Textiles, GMBH & Co., K.G., a joint venture company at Dusseklort, Germany. But, M/s.Triven Textiles, GMBH & Co., failed to honour the commitment as per the Letter of Credit and therefore, ERSTE Bnk lodged a claim petition for a sum of Rs.5.10 crores with Global Trust and the Global Trust Bank demanded M/s. Triven Garments, to pay the said sum but the said company failed to pay the said amount. Therefore, the Global Trust Bank paid the amount to ERSTE Bank and settled the claim and filed O.A./T.A.No.271 of 2001 on the file of the Debts Recovery Tribunal, Chennai against M/s.Triven Garments, for recovery of the said sum. During pendency of the said case, the Global Trust Bank and M/s. Triveni Garments, entered into a compromise on 24.07.2001 and on the basis of the same, compromise decree was passed. As per the compromise decree, Debts Recovery

Tribunal at Chennai brought some properties situated in Villivakkam, Chennai which were mortgaged with the bank, in public auction on 29.8.2001 and the same was purchased by M/s.A.R.HousingPvt Ltd., represented by its Director Mr.R.R.Govindarajulu, who is none other than the brother in law of the second petitioner. Later, the 2nd petitioner having realised that M/s.Meera Bai Dawson died issueless on 16.12.2001, hatched a plan to usurp their property and submitted a forged letter alleged to have been executed by the said Meera Bai Dawson and filed an Application before the DRT, Chennai, on 3.5.2002 for substitution of property belonging to Meera Bai Dawson for the property situate in Villivakkam which was sold in pubic auction on 29.8.2001. The Debts Recovery Tribunal, Chennai allowed the Application for substitution of the property and the property belonging to Mrs.Meera Bai Dawson was substituted in the place of Villivakkam property. As a matter of fact, on 9.8.2002, Debts Recovery Tribunal issued sale certificate in the name of M/s.A.R.Housing Pvt.LTd., in respect of the property belonging to Meera Bai Dawson and as per the sale certificate dated 9.8.2002, as it originally stood, the property which was purchased by M/s.A.R.Housing Pvt Ltd., was the Villvakkam property but later, the property belonging to Mrs.Meera Bai Dawson was substituted and thus, M/s. AR Housing Pvt.Ltd., became the auction purchaser of the property belonging to Mrs.Meera Bai Dawson, which is the subject matter of this criminal complaint. The tenants and occupants of the said property belonging to Mrs.Meera Bai Dawson filed W.P.Nos.39649 of 2002, 27303 of 2003, 17736 and 20357 of 2004 before this Court to quash the sale certificate dated 9.8.2002 in respect of the property belonging to Mrs.Meera Bai Dawson. Those Writ Petitions were allowed and the sale certificate issued in favour of M/s.A.R.Housing Pvt Ltd., in respect of Mrs.Meera Bai Dawson's property was set aside by this Court.

(ii) It is further stated that Meera Bai Dawson who was the real owner of the property situated at L.B.Road, Adyar admittedly left a Will dated 30.11.1993 and the Will was executed at U.K.,. In the said Will, she appointed her husband, Hugh Kenneth Dawson, and the partners of the firm M/s. Blackman and Blackman as Executors of the Will and further stated that in the event of any of the Executors predeceased her or for any reason unwilling to act as Executors, then the partners of M/s. Blackman and Blackman, solicitors, shall act as Executors of her estate. The said Meera Bai Dawson died issueless on 16.12.2001 in London and therefore, the State became the owner of the property by reason of escheat. The husband of Meera Bai Dawson predeceased her. The solicitors of the firm filed an Application as Executors, as per the Will before the Honourable High Court of Justice, the District Probate Registry at Ipswich to probate the Will of the said Meera Bai Dawson dated 30.11.1993 and the Honourable High Court in UK granted Probate of the Will dated 30.11.1993 on 11.3.2002. Thereafter, the Executors through their power agent filed an Application before this Court in Original Petition No.192 of 2003 for Ancillary Probate pertaining to the properties mentioned therein and this Court by Order dated 6.12.2004 issued Letters of Administration in favour of the Executors in respect of the properties stated therein.

(iii) M/s.A.R.Housing Private Limited filed an Application in A.No.481 of 2005 in O.P.No.192 of 2003 for revoking/annulling the Letters of Administration granted in favour of the Executors and the same was dismissed on 10.8.2006 on the ground that M/s.A.R.Housing Pvt Ltd., has no locus standi or caveatable interest over the property belonging to Meera Bai Dawson as the sale certificate was obtained fraudulently. M/s.A.R.Housing Pvt Ltd., took a specific stand in Application 481 of 2005 that the Probate granted by the Court in England is confined to the properties situate in England only and they cannot lay their hands over the Indian properties belonging to Mrs.Meera Bai Dawson. However, the sale certificate issued by the DRT, Chennai in favour of M/s.A.R.Housing Pvt.Ltd., in respect of Mrs.Meera Bai Dawson property in India was set aside by this Court in W.P.No.39649 of 2002, 27303 of 2003 etc.,. Therefore, having realised that they had no right over the property, M/s.A.R.Housing Pvt.Ltd., and M/s. Triven Garments Ltd approached the Executors recognising them as the owner of the property belonging to Mrs.Meera Bai Dawson and obtained a registered Sale Deed dated 22.2.2007 in Document No.1073 of 2007, Sub Registrar Office, Adyar, Chennai, in the name of M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd.,. As per the Sale Deed, the property was sold to the said M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., for a consideration of Rs.20 crores and consideration was paid by R.R.Govindarajan, one of the Directors of M/s.A.R.Housing Pvt.Ltd.,. It is further stated that the said Rs.20 crores paid by R.R.Govindarajan was the money obtained from M/s.IVRCL who purchased the lands from the owners through the second petitioner in respect of which the second respondent/defacto complainant acted as a middleman and therefore, the second respondent/defacto complainant claimed that he had necessary locus standi to present the complaint.

5. Third set of criminal offence as stated in the F.I.R. is as follows:-

M/s.True Value Home Pvt.LTd., knowing fully well about the fraudulent activities of the petitioners, M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., and M/s. Triven Garments Limited Company entered into a joint development agreement with the owner of the property, namely, M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., for the purpose of constructing a Mega Housing Commercial Project in the said property and jointly mortgaged the said property with the Indian Bank by depositing the title deeds and obtained a loan of Rs.100 crores.

(ii) Sri Ramachandra Educational and Health Trust represented by its Managing Trustee, Mr.V.R.Venkatachalam entered into a Memorandum of Understanding with M/s.A.R.Housing Pvt.Ltd., and M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., with a common intention to make wrongful gain by playing fraud in respect of the property which was vested with the Government by reason of escheat. Therefore, all the aforesaid persons conspired, colluded and created fraudulent documents to usurp the property belonging to Union of India and therefore, action has to be taken against them.

(iii) As stated supra, no action was taken on the complaint given by the second respondent. Therefore, the second respondent filed Criminal O.P.No.19095 of 2010 and by order dated 8.12.2010, this Court disposed of the O.P., by directing the Deputy Commissioner of Police, City Crime Branch, Chennai to conduct enquiry on the complaint pending with the CCB Team -1, Chennai and initiate action if any cognizable offence was made out as per section 154 (1) of Cr.P.C.,. Thereafter, a case was registered in Crime No.450 of 2011 by the first respondent.

6. Criminal O.P.No.8645 of 2014 was filed to quash the F.I.R. in Crime No.450 of 2011. Criminal O.P.No.4739 of 2011 was filed to transfer of investigation in respect of Crime No.450 of 2011 from the third respondent therein to any other competent agency or CBI.

7. Mr.P.L.Narayanan, learned counsel appearing for the petitioners submitted that the first respondent ought not to have registered the case on the complaint given by the second respondent without conducting any proper enquiry to find out whether the second respondent has got any locus standi and whether the second respondent has abused the process of court by suppressing various facts to his knowledge and whether any cognizable offence was made out on the basis of the complaint given by the second respondent. He has submitted that insofar as the transaction between the second respondent and the petitioners in respect of the property belonging to various persons in Sandavellur Village, Sriperumbudur Taluk, is concerned that has nothing to do with the main accusation made against the petitioners. He submitted that even according to the complaint, the second petitioner is the Director of M/s. Altirven Steels Pvt Ltd., and he entered into a Memorandum of Understanding with IVRCL, a public limited company and approached the second respondent/defacto complainant for purchase of lands in Sandavellor Village through the second respondent and the second respondent also agreed to act as a middleman and helped the second petitioner to purchase the property in favour of IVRCL and obtained power deeds from the owners of the property in favour of the second petitioner and the second petitioner on the basis of power deeds sold these properties to IVRCL for sale consideration but they did not pay the same to the owners of the property. To substantiate the same, no materials were furnished by the second respondent/defacto complainant and no complaint was given by the owners of the property who executed power in favour of the second petitioner and whose lands were sold by the second petitioner as power agent to IVRCL. Further, even according to the second respondent, he filed a claim petition before the arbitrators as per the agreement entered into with the petitioners and also filed a petition in O.P.No.280 of 2010 for appointment of third Arbitrator u/s.11 and for other reliefs u/s.9 of the Arbitration and Conciliation Act in O.A.No.690 of 2010

and those properties are pending adjudication. He therefore submitted that those transactions have nothing to do with the property belonging to Mrs.Meera Bai Dawson. He therefore submitted that the second respondent has no personal interest in the property of Mrs.Meera Bai Dawson and as a matter of fact, the second respondent also attempted to purchase the property belonging to Mrs.Meera Bai Dawson and he was not successful. He filed W.P.No.16400 of 2012 against the State of Tamil Nadu, rep.by Secretary; Secretary to Government, Revenue Department; The District Collector, Chennai; The Tahsldar, Mylapore-Triplicane Taluk; The Chairman/Managing Director, Chennai Metropolitan Development Authority, Chennai; M/s.Triven Garments Ltd., represented by its Managing Director L.S.Abhinesha Babu; Executors of Mrs.Meera Bai Dawson and their power agents; A.R.Housing Pvt.Ltd., M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., Sri Ramachandra Educational and Research Trust, True Value Homes India Pvt. Ltd., and prayed for a Writ of Mandamus directing the respondents 1 to 4, namely, the Government authorities to take possession of the property situate at Adyar, Chennai in T.S.No.11, Block No.21 (Old Survey No.63) measuring 2.27 acres and in T.S.No.9/1, Block No.21 (Old Survey No.63) measuring 1.40 acres belonging to Mrs. Meera Bai Dawson and conduct enquiry on the complaint given by the petitioner on 2.7.2010 in accordance with law. In that writ Petition, the very same allegations now made in the complaint in Crime No.450 of 2011 relating to Meera Bai Dawson's property were made and the Hon'ble Division Bench of this Court by order dated 4.7.2012 dismissed the Writ Petition holding that the second respondent/petitioner himself was a developer and having interest over the property in dispute and number of litigations were pending at the instance of the petitioner, both civil and criminal and also under the Arbitration and Conciliation Act and he invented a novel method by way of filing the present Writ Petition to knock out others from getting the said property and also for development of the property, the petition was filed with an ulterior motive and dismissed the same. He therefore, submitted that having regard to the order by the Division Bench of this Court in W.P.No.16400 of 2012, the first respondent police ought not to have registered the case on the complaint given by the second respondent as the second respondent based the above writ only on the complaint given by him on 2.7.2010 which was the subject matter of Crl.O.P.No.19095 of 2010. He further submitted that the second respondent did not state any thing about the order passed in W.P.No.16400 of 2012 and suppressed the same.

8. He further submitted that the second respondent filed Crl.O.P.No.8575 of 2010 on the file of this Court to quash the case in Crime No.96 of 2010 on the complaint given by Nagarajan and that petition was dismissed by this Court on 29.7.2010 holding that prima facie case has been made out against the petitioner and dismissed the said Petition. Therefore, the second respondent actuated with malice and vengeance and having realised that he was not able to

purchase the property belonging to Mrs.Meera Bai Dawson filed the first complaint by suppressing various facts.

9. He further submitted that though the criminal law can be set in motion by any person, the present complaint cannot be given by the second respondent as there is no public interest involved and the second respondent misguided the court and police by creating an impression that the property belonging to Mrs.Meera Bai Dawson vested with the Government by way of escheat as she died issueless and there was no legal heir to claim any right to her estate. He submitted that a reading of the Will dated 30.11.1993 executed by Mrs.Meera Bai Dawson would make it clear that under the Will, she bequeathed all her property whatsoever and wheresoever to her husband absolutely and made Salvation Army as the residuary legatee under the Will. It is made clear in the said Will that residuary estate was given to the Salvation Army of 101, Queen Victoria Street, London. He therefore submitted that when there is residuary legatee, the property would not vest in the Government by way of escheat and when the Government had not become owner of the property, the complaint given by the second respondent as if the Government's property was grabbed by the petitioners cannot be sustained. He further submitted that the prosecution can be launched only when any offence against public or society at large has been committed and not in respect of the individual person and relied upon the judgment of the Hon'ble Supreme Court reported in (1987) 1 SCC 288 in the case of Sheonandan Paswan Vs. State of Bihar. He therefore submitted that the second respondent who has nothing to do with the property of Mrs.Meera Bai Dawson cannot make a complaint with respect to the property of Mrs.Meera Bai Dawson which was dealt with by the Executors appointed by her.

10. He also submitted that admittedly, in O.P.No.192 of 2003, ancillary probate was granted by this Court in respect of Mrs.Meera Bai Dawson's property in India and the schedule of the property attached to the Letters of Administration includes the property in Old Door No.15, 16 and 19 (in S.No.63, TS No.12 at Urur Village, Saidapet), Lattice Bridge Road, Adyar, Chennai. He therefore submitted that when Letters of Administration was granted by the competent court, it is a judgment in rem and binding on all the parties and if any interested party has got any caveatable interest in the properties covered under the Letters of Administration, such person can apply to the Court which granted the Letters of Administration stating fraud has been committed in the grant of Letters of Administration and without taking any steps to revoke the Letters of Administration, it cannot be stated that fraud has been committed in obtaining the Letters of Administration by the petitioners and others and therefore, the petitioners and others are not liable to be prosecuted. It is also submitted that except by alleging fraud, no particulars were given by the second respondent to substantiate the fraud and a mere perusal of the complaint given by

the second respondent would also make it clear that no fraud has been committed by the petitioners.

11. He also submitted that though the property of Mrs.Meera Bai Dawson was substituted in the sale certificate issued by the DRT in favour of the first petitioner, later the sale certificate was cancelled by order of this Court in W.P.No.39649 of 2002. Thereafter, the property belonging to Mrs.Meera Bai Dawson was sold by Executors appointed by her on the basis of the Letters of Administration given by this Court, to M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., by registered Sale Deed dated 22.2.2007 and in that Sale Deed, M/s.A.R.Housing Pvt.Ltd., was a confirming party as originally, DRT sale in respect of the said property was in favour of the M/s.A.R.Housing Pvt.Ltd., and though the said sale was set aside, to convey clear title, M/s.A.R.Housing Pvt.Ltd., was also made as a confirming party at the request of the purchaser. The property belonging to Mrs.Meera Bai Dawson was sold by the Executors of her Will on the basis of Letters of Administration granted by this Court in Crl.O.P.No.192 of 2003 and the purchaser became the absolute owner of the property. He therefore submitted that as the property belonging to Mrs.Meera Bai Dawson was sold by the competent person, namely, the Executors, the second respondent cannot complain that the property was sold by fraudulent means by the petitioners as the property became Government property by reason of escheat.

12. The learned counsel also relied upon the judgment reported in 2011 (7) SCC 59 in the case of Joseph Salvaraj Vs. State of Gujarat and contended that the second respondent was not a privy to any contract and admittedly, he attempted to purchase the property belonging to Mrs.Meera bai Dawson and failed in his attempt and the property of Mrs.Meera Bai Dawson was sold by the Executors validly appointed by her after getting the Letters of Administration from this Court and in such circumstances, in the absence of any privity of interest, the second respondent has with the property belonging to Mrs.Meera Bai Dawson, there was no cause of action for him to lodge a complaint. He further submitted that whenever a party alleges that the decision or judgment is vitiated by fraud, the proper course for him would be to approach the same Court which rendered the decision to set aside the order/decree and without taking any steps to revoke the Letters of Administration, a complaint cannot be sustainable on the mere allegation that fraud has been practised in obtaining the Letters of Administration.

13. He also submitted that the case has been registered for offences under sections 419, 420, 465, 467, 468, 471, 474 and 120(B) IPC. In order to attract the offences of cheating, there must be dishonest intention and the accused must have induced the complainant to part with the property and based on the inducement, the complainant would have parted with the property. In this case, the complainant is the second respondent and the property, admittedly,

never belonged to him and he was not induced to part with the property and therefore, there is no question of commission of offence punishable under sections 419 and 420 IPC. He further submitted that the offences punishable under sections 465, 467, 468, 471 and 474 IPC will also not be attracted having regard to the facts of the case. He submitted that in order to attract sections 465, 467, 468, 471 and 474 IPC, forgery must have been committed as defined under section 463 IPC in respect of the document and in this case, admittedly, Mrs.Meera Bai Dawson executed a Will dated 30.11.1993 appointing Executors and the Will was probated at UK and ancillary Probate was obtained by Executors through their power agent from this Court and on the basis of the Letters of Administration granted by this Court, the property was sold by the Executors through power agent to the purchaser in the year 2007. Therefore, there is no question of creating any false documents or commission of forgery and therefore, no evidence has been made available by the complainant in his complaint and without appreciating the same, the first respondent police registered a case without conducting proper enquiry merely on the basis of order passed by this court in Crl.O.P.No.19095 of 2010. He therefore, submitted that the complaint given by the second respondent is a clear abuse of process of law and he has suppressed the material particulars regarding W.P.No.16400 of 2012 filed by him in respect of the same property making the very same allegation which was dismissed by this Court holding that he abused the process of Court. He therefore submitted that the petition is liable to be allowed and the complainant in Crime No.450 of 2011 on the file of the first respondent is liable to be quashed.

14. The learned counsel appearing for the second respondent argued at length and also submitted a notes of argument reiterating his contention.

15. The learned counsel appearing for the second respondent submitted that even though the Letters of Administration was granted by this Court in respect of the Will of Mrs.Meera Bai Dawson dated 30.11.1993, that was obtained by practising fraud on this Court and the same is a nullity and there is no need to get a decree to that effect and once fraud has been practised in obtaining a decree, that decree is to be treated as non-est, and no right accrues to any person under the decree and relied upon the judgment reported in (2012) 1 SCC 476 in the case of Union of India and others Versus Ramesh Gandhi. He submitted that as per the judgment of the Hon'ble Supreme Court, the first respondent police can conduct enquiry to find out as to whether any fraud has been practised in obtaining Letters of Administration and that is permissible under law and there is no need to get the Letters of Administration revoked by approaching the same Court. He submitted that admittedly, the property belonged to Mrs.Meera Bai Dawson and she died issueless and she also executed a Will dated 30.11.1993 and the Will was executed at U.K. He submitted that under Article 296 of the Constitution of India when a person died without leaving any legal heir, the said

property would accrue to the State as Bono Vacantia for want of rightful owner and admittedly, Mrs.Meera Bai Dawson died issueless and there is no legal heir to her and therefore, the property goes to the State by escheat as Bono Vacantio and when the property becomes the property of the State and any person without having any right over the property meddles with the property, a complaint can be given by any person, and such person need not necessarily have any right or interest over the property and therefore, it cannot be contended that he has no locus standi to give a complaint in respect of the property belonging to Mrs.Meera Bai Dawson in respect of which fraud has been committed by the petitioners.

16. He also submitted that when the second respondent filed Crl.O.P.No.19095 of 2010 seeking for a direction to register a case on his complaint dated 2.7.2010, that petition was contested by the petitioners and also by the State and this Court, after observing the disturbing factors in the commission of crime committed by the petitioners in respect of the property of Mrs.Meera Bai Dawson, directed the police to conduct enquiry and register a case and in compliance of the direction of this Court, the case came to be registered and therefore, the present petition to quash the complaint is not maintainable as if it would amount to reviewing the decision of this Court made in Crl.O.P.No.19095 of 2010.

17. He submitted that as per the judgment reported in 1984 SCR (2) 914 A.R.Antulay vs. R.S.Nayak & another, anyone can set the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except where the statue creating an offence provides for the eligibility of the complainant, by necessary implication. He therefore submitted that as the property had vested with the State by reason of escheat and fraud had been committed in respect of the property, the second respondent has got locus standi to file the complaint. He also submitted that the issue of locus standi was considered by this Court in Crl.O.P.No.19095 of 2010 and was upheld and hence, it is not open to the petitioners who are also party to that proceedings to raise the same issue.

18. He also submitted that though W.P.No.16400 of 2012 was filed by the second respondent seeking for a direction to the Government to take possession of the property belonging to Mrs.Meera Bai Dawson on the basis of the law of escheat and the petition was dismissed on 4.7.2012, he filed SLP (Civil) No.30266 of 2012 before the Hon'ble supreme Court and the Hon'ble Supreme Court while dismissing the SLP clearly observed that the dismissal of the SLP would not affect the other steps taken by the petitioner. He also submitted that various fraudulent acts committed by the petitioners in respect of the property belonging to Mrs.Meera Bai Dawson was elaborated in his complaint and they are as follows:-

(i) The agreement of sale was alleged to have been executed by Mrs.Meera Bai Dawson in favour of the first petitioner on 22.6.1999 and Mrs.Meera Bai Dawson was also inducted as the Director of M/s.Triven Gardments Ltd., company on 16.6.2000.

(ii)The signatures of Mrs.Meera Bai Dawson found in the agreement of sale were fabricated and forged. All the documents were fabricated in Indian Non-Judicial Stamp Papers when admittedly, agreements were executed at U.K., and there was no proper adjudication in respect of those documents.

(iii) There was no power given to the second petitioner to mortgage the property or to give the property as security for others and the agreement of sale and other documents were attested by the same notary though they were executed on various dates and there was only one witness to these documents and the hand writing expert also gave a statement that the signatures found in the sale agreement, power of attorney alleged to have been executed by Mrs.Meera Bai Dawon were not similar to the admitted signatures of Mrs.Meera Bai Dawson as found in the Will. These factors would prima facie prove that fraud has been committed by the petitioners in usurping the property of Mrs.Meera Bai Dawson by fraudulent means.

19. He submitted that Global Trust Bank initiated proceedings against M/s.Triven Garments Ltd., before the Debts Recovery Tribunal and a Memorandum of Compromise was entered into between the bank and M/s.Triven Gardments Ltd., and on that basis decree was passed and pursuant to that the properties belonging to M/s.Triven Garments Ltd., situated at Villivakkam were brought to sale in public auction on 29.8.2001. M/s.A.R.Housing Pvt.Ltd., purchased the said property. Thereafter, on the basis of alleged agreement of sale and power alleged to have been executed by Mrs.Meera Bai Dawson, the property belonging to Mrs.Meera Bai Dawson was sought to be substituted and that was also allowed by Debts Recovery Tribunal and by reason of that M/s.A.R.Housing Pvt.Ltd., became the auction purchaser in respect of the property belonging to Mrs.Meera Bai Dawson though Mrs.Meera Bai Dawson was not the judgment debtor nor agreed to sell the property to M/s.A.R.Housing Pvt.Ltd.,. The sale certificate dated 9.8.2002 issued by the Debts Recovery Tribunal to M/s.A.R.Housing Pvt.Ltd., in respect of the property belonging to Mrs.Meera Bai Dawson was questioned by the residents of that property and others in W.P.No.39649 of 2002, 27303 of 2003 etc., and prayed for quashing the sale certificate dated 9.8.2002 and those writ petitions were allowed and the sale certificate was quashed. Thereafter, M/s.A.R.Housing Pvt.Ltd., took steps to revoke the Letters of administration and that was also dismissed holding that he had no caveatable interest. In the mean while, an affidavit was filed alleged to have been sworn by Mrs.Meera Bai Dawson in the year 2002 when admittedly, Mrs.Meera Bai Dawson died on 16.12.2001 before this Court for obtaining certain documents and that would also prove that forged documents were filed to get orders from this Court. While dismissing W.P.No.39649 of 2002, this Court held that illegality was writ at large in the issuance of sale certificate

dated 9.8.2002 in respect of the property belonging to Mrs.Meera Bai Dawson and there has been misuse of process of law and therefore, when illegality has taken place, the point of locus standi has to be ignored. He therefore submitted that the order in W.P.No.39649 of 2002 etc., would clearly prove that fraud has been practised in obtaining sale certificate from DRT in respect of Mrs.Meera Bai Dawson property and that was rightly set aside.

20. He also submitted that fraud committed by the petitioners was also confirmed by the action of the executor in filing C.S.No.120 of 2005 before this Court wherein stay of sale against the sale of the property to M/s.A.R.Housing Pvt.Ltd., was passed. If really, Mrs.Meera Bai Dawson entered into agreement of sale in the year 1999 and agreed to substitute her property for the loan payable by M/s.Triven Gardments Ltd., there was no necessity for the Executors to file a suit in C.S.No.120 of 2005. Having realised that the sale of the property belonging to Mrs.Meera Bai Dawson in favour of M/s.A.R.Housing Pvt.Ltd., was set aside, M/s.A.R.Housing Pvt.Ltd., filed an Application to revoke the Letters of Administration questioning the competency of the Executors in filing Application O.P.No.192 of 2003 for the grant of letters of Administration making allegation against them and also questioned their authority and that was dismissed by this Court holding that M/s.A.R.Housing Pvt.Ltd., had no caveatable interest. Thus, having realised that M/s.A.R.Housing Pvt.Ltd., cannot claim any right over the property as per the sale certificate issued by the DRT, M/s.A.R.Housing Pvt.Ltd., attempted to get the property in an indirect way by setting up M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., and made the said company to purchase the property and in that sale deed, M/s.A.R.Housing Pvt.Ltd., was made as a confirming party. He submitted that fraud has become patent from the execution of the sale deed making M/s.A.R.Housing Pvt.Ltd., as a confirming party. He submitted that the Executors filed C.S.No.120 of 2005 against M/s.A.R.Housing Pvt.Ltd., and this Court also set aside the sale of property of Mrs.Meera Bai Dawson in favour of M/s.A.R.Housing Pvt.Ltd., in the writ petitions aforesaid. Nevertheless, the Executors joined hands with the first petitioner and sold the property to M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., making M/s.A.R.Housing Pvt.Ltd., as confirming party when admittedly, M/s.A.R.Housing Pvt.Ltd., has no right or title over the same. Further, it is seen from such sale deed that M/s.A.R.Housing Pvt.Ltd., paid sale consideration on behalf of the purchaser and that would also prove the fraudulent act. He therefore, submitted that these facts would really make out a prima facie case of cheating and forgery and these aspects have to be investigated and found out, and at this stage, this court cannot conduct a roving enquriy as to whether the allegations are true or not. Hence, the second respondent/defacto complainant made out a prima facie case of cheating and forgery, the petitions filed by the petitioners are liable to be rejected.

21. He submitted that as per the Will of Mrs.Meera Bai Dawson she had not executed any Will in respect of the property situated in India and this has been made clear in clause 4 of the Will. Further, the Executors of Mrs.Meera Bai Dawson sent e-mail dated 13.8.2002 to one Natarajan, who was a local benami of Mrs.Meera Bai Dawson stating that Meera Bai Dawson died intestate in respect of the property in India. Therefore, the alleged Executors have no right to act as Executors in respect of the property in India on the basis of the alleged Will executed by Mrs.Meera Bai Dawson. The petitioners conspired with the Executors of Mrs.Meera Bai Dawson in getting the Letters of Administration in India and that would amount to forgery punishable under sections 467, 468 of the IPC. He also submitted that there is no impediment for giving a complaint, as per section 195 Cr.P.C., as no offence has been committed in respect of a document when the document was in the custody of the Court. He also relied upon the judgments reported in (2013) 11 SCC 559: 2013 Crl.L.J. 3684 in the case of C.P.Subash vs. Inspector of Police wherein the Judges of the Hon'ble Supreme Court relied upon the earlier judgment of the Supreme Court reported in (2005) 4 SCC 370 in the case of Iqbal Singh Marwah and another vs. Meenakshi Marwah and another, and held that section 195 Cr.P.C. will be attracted only when forgery has been committed when the document is in custodia legis. He also relied upon the jdugment reported in 1992 Supp (1) SCC 335 in the case of State of Haryana and Ors. V. Ch.Bhajan Lal and Others where the Supreme Court had laid down various guidelines while registering a case as well as quashing F.I.R.,. He also relied upon the judgment reported in (2013) 2 SCC 801 in the case of Arun Bhandari vs. State of Uttar Pradesh to the effect that when serious allegations of fraud are made, the contentions that the allegations are of civil in nature cannot be a reason to refuse the registration of the crime. He also relied upon the judgment reported in (1999) 3 SCC 259 in the case of Rajesh Bajaj v. State, NCT of Delhi; (2004) 1 SCC 691 in the case of State of Madhya Pradesh vs. Awadh Kishore Gupta; (2009) 3 SCC 78 in the case of V.Y.Jose and another vs. State of Gujarat and another and (2011) 3 SCC 351 in the case of Harshendra Kumr D. vs. Rebatilatha Koley etc., regarding the scope of power under section 482 Cr.P.C. and submitted that materials were furnished to make out a prima facie case for registering a crime. The first respondent after conducting enquiry, and on being satisfied with the same, registered a case in Crime No.450 of 2011 and that was also done after the second respondent pointed out various irregularities in the manner of sale of the property of Mrs.Meera Bai Dawson by practising fraud by the petitioners and unless investigation is allowed to conduct, the truth cannot be revealed and therefore, at this stage, F.I.R cannot be quashed and prayed for dismissal of the petition.

22. Having considered the arguments of the learned counsel appearing for the petitioners, the arguments of the learned counsel appearing for the petitioners can be summarised as follows:-

(i) The second respondent has no locus standi to initiate criminal action.

(ii) The Letters of Administration was granted by a competent Court and without taking steps to revoke the Letters of Administration, the present complaint given by the second respondent assuming fraud and forgery cannot be sustained.

(iii) In W.P.No.16400 of 2012, this Court held that the second respondent also attempted to get the property belonging to Mrs.Meera Bai Dawson and having failed in his attempt, he has filed the Writ Petition and he has no caveatable interest and that would also prove that the second respondent has no locus standi to initiate the complaint.

(iv) The ingredients of cheating and forgery are not made out in the complaint and the order passed in Crl.O.P.No.19095 of 2010 cannot be a basis for registering the F.I.R.,.

The second respondent submitted the following points:-

(i) Mrs.Meera Bai Dawson died issueless and therefore, the property became the property of the State by reason of escheat and it has become public property and there is no need for locus standi to initiate action in respect of forgery or fraud committed in respect of the public property.

(ii) Fraud has been made clear in the order passed in W.P.No.39649 of 2002 etc., wherein this Court held the sale certificate granted in favour of M/s.A.R.Housing Pvt.Ltd., in respect of Mrs.Meera Bai Dawson property as per the sale certificate issued by the DRT was invalid and was a clear abuse of process of law and the sale certificate granted by the DRT in favour of M/s.A.R.Housing Pvt.Ltd., was set aside and that has become final and therefore, prima facie case has been made out regarding fraud committed in respect of Mrs.Meera Bai Dawson property.

(iii) Though admittedly, Mrs.Meera Bai Dawson died on 16.12.2001, in the year 2002, an affidavit was filed alleged to have been signed by Mrs.Meera Bai Dawson for getting sale document from this Court and that would also prove fraud played upon this Court. In Crl.O.P.No.19095 of 2010, this Court found glaring discrepancies in respect of the property belonging to Mrs.Meera Bai Dawson and directed the first respondent police to conduct enquiry and investigate the case and having been satisfied with the averments made in the complaint in respect of the various offences committed by the petitioners, F.I.R. has been registered and only during investigation, fraud, forgery and cheating can be brought to light and at this stage F.I.R. cannot be quashed.

23. Therefore, considering the arguments of the learned counsel for both parties, both parties argued about the locus standi of the second respondent and the petitioners argued that the second respondent has no locus standi as the property was a private property of Mrs.Meera Bai Dawson and was dealt with by legally appointed Executors and on the other side, the learned counsel for the second

respondent argued that the property became the public property by reason of escheat and when the property becomes public property by reason of escheat any public can set the law in motion and also relied upon various judgments in support of his contention. Therefore, the issue of locus standi can be considered in the first instance.

24. While narrating the facts of the case as per F.I.R., in the beginning of this judgment, I have stated that F.I.R. contains three or more instances of crimes. Insofar as the first instance of crime is concerned, according to me, that has nothing to do with the main offence alleged to have been committed by the petitioners in respect of property belonged to Mrs.Meera Bai Dawson as alleged by the second respondent. First part of the crime was between M/s.Altriven Steels Pvt Ltd., and IVRCL and the second petitioner was appointed as power agent by the owners of the property in the village Sandavellor, Sri Perumbudur Taluk, and the second petitioner acted as their power agent sold their property to IVRCL and received sale consideration without paying the entire sale consideration to the owners of the property. It is also stated that in respect of those sale transactions, a claim was lodged by the second respondent before the arbitrators as per the agreement, he entered into with the petitioners and filed a petition before this Court in O.P.No.280 of 2010 for the appointment of third arbitrator under section 11 of the Arbitration and Conciliation Act and also sought for other reliefs under section 9 of the Act in O.A.No.690 of 2010 and the same are pending adjudication. Therefore, according to me, those facts are alien to the facts narrated subsequently by the second respondent in his complaint and there was no connection between those facts and also the allegation in respect of the property of Mrs.Meera Bai Dawson and in respect of the first part of the F.I.R., arbitration proceedings are initiated by the second respondent and hence that cannot be a basis for registering the F.I.R. against the petitioners.

25. The second part of the offence, according to F.I.R. though has anything to do with Mrs.Meera Bai Dawson's property, having regard to certain admitted facts, Mrs. Meera Bai Dawson's property was also involved in the second part of the crime and therefore, it is worthwhile to consider whether the second part of the crime, has anything to do with Mrs.Meera Bai Dawson's property.

26. M/s.Triven Garments Pvt.Ltd., which was incorporated as a private limited company was later converted into deemed public limited company and the second petitioner is the Managing Director, his father, father-in-law and his friend Vijayakumar are Directors of the said company. The said company approached the Global Trust Bank Ltd., for opening a Letter of Credit in favour of ERSTE Bank to the tune of 2.50 Million D.M.(Deutsche Mark) amounting to Rs.6.25 crores in Indian currency by mortgaging the property of the company situated at Villivakkam. The bank sanctioned Letter of Credit and according to the second respondent, the amount covered under the Letter of Credit was to be used for investing in M/s.Triven Textiles, GMBH & Co., K.G., a joint venture company at Dusseklort, Germony. The said

foreign company, namely, M/s.Triven Textiles, GMBH & Co., K.G., failed to honour their commitment as per Letter of Credit and therefore, ERSTE bank lodged a claim petition for a sum of Rs.5.01 crores (DM 2,299,681.86) with Global Trust Bank and in turn, Global Trust Bank demanded M/s.Triven Garments Ltd., to pay the said sum and when M/s.Triven Garments failed to pay the said sum, the amount was paid by Global Trust Bank to the ERSTE Bank and the Bank filed O.A.No.271 of 2001 on the file of the DRT, Chennai against M/s.Triven Garments for recovery of the said sum. Till such transaction, it was a private transaction between M/s.Triven Garments, Global Trust Bank and ERSTE Bank and the second respondent has no role or right in that. According to the second respondent, the second petitioner having an eye on the property of Mrs.Meera Bai Dawson, who died issueless created power of attorney alleged to have been executed by Mrs.Meera Bai Dawson in favour of the second petitioner for dealing with her property in any manner and pursuant to that, he also alleged to have entered into a document confirming the appointment of the second petitioner as her power agent and authorising the second petitioner to approach the DRT, Chennai to sell her property, for the dues payable in respect of the award passed in O.A.No.271 of 2001 on the file of the DRT and on the basis of the power of attorney, the property of Mrs.Meera Bai Dawson was substituted for the property which was brought to sale in auction in O.A.No.271 of 2001 and on that basis, sale certificate was issued in respect of the property belonging to Mrs.Meera Bai Dawson on 9.8.2002 and as per the sale certificate, M/s.A.R.Housing Pvt.Ltd., became the auction purchaser of the property belonging to Mrs. Meera Bai Dawson. Later, the certificate of sale dated 9.8.2002 was set aside in W.P.No.39649 of 2002 etc., dated 21.2.2005 on the ground that public auction was conducted only in respect of Villivakkam property and M/s.A.R.Housing Pvt.Ltd., became a successful bidder in respect of that property and therefore, after sale was confirmed, the property cannot be substituted by DRT and liberty was given to Oriental Bank of Commerce to recover the debt or to file an appropriate application if so advised for sale of the judgment debtor's property, namely, Mrs. Triven Garments Pvt Ltd., and this Court also cancelled the sale certificate dated 9.8.2002 granted in favour of M/s.A.R.Housing Pvt.Ltd., in respect of Mrs.Meera Bai Dawson's property.

27. Therefore, the question that arises for consideration in respect of the second part of the crime is with respect to the general power of attorney dated 18.8.2000 alleged to have been executed by Mrs.Meera Bai Dawson in favour of the second petitioner and document of confirmation alleged to have been executed by Mrs.Meera Bai Dawson dated 17.8.2001 and the substitution of Mrs.Meera Bai Dawson's property with the property belonging to Mrs.Triven Garments situated at Villivakkam and oder of the DRT in allowing substitution. By reason of the order passed in W.P.No.39649 of 2002 etc., the sale certificate dated 9.8.2002 issued in favour of the petitioner in respect of Mrs.Meera Bai Dawson was set aside. There is no finding in the said order that fraud has

been practised by M/s.A.R.Housing Pvt.Ltd., or by the second petitioner in getting the property substituted nor any finding was given that the power of attorneyt and document of confirmation alleged to have been executed by Mrs.Meera Bai dawson were forged. As stated supra, considering the question whether the DRT could have substituted another property which was stated to be more valuable without bringing the said property for sale in public auction, this Court held that the substitution of property belonging to Mrs.Meera Bai Dawson which was allowed by DRT was contrary to law and also to the public policy and after referring to Rule 52 and 53 of the Income Tax (Certificate Proceedings) Rules 1962 and after referring to various Supreme Court's judgment held, the substitution was against law and set aside the sale certificate dated 9.8.2002. Later, the petitioners challenged the order passed in W.P.No.39649 of 2002, in W.A.No.972 to 974 and 1012 of 2005, wherein a Memorandum of Compromise was entered into between the parties and by judgment dated 31.03.2009, those Writ Appeals were disposed of in terms of the said Memorandum of Compromise dated 27.03.2009. Before entering into the Memorandum of Compromise, the property belonging to Mrs.Meera Bai Dawson was sold by the Executors through their power agent to M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., vide registered sale deed dated 22.2.2007 and that sale deed was accepted by the appellants in the Writ Appeals and compromise was entered into between the parties to the Writ Appeal on 31.3.2009. Therefore, insofar as the second part of the crime, according to F.I.R. is concerned, though the sale of the property belonging to Mrs.Meera Bai Dawson was set aside by this court in Writ Petitions, subsequently, the property belonging to Mrs.Meera Bai Dawson was sold by the Executors wherein M/s.A.R.Housing Pvt.Ltd., was made a confirming party in favour of M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., and that was accepted by the writ appellants and that M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., became the absolute owner of the property. Therefore, in respect of the second part of the offence, as per F.I.R., the second respondent/defacto complainant has no role to play.

28. The main contention of the learned counsel appearing for the second respondent/defacto complainant to counter the argument that the second respondent has no locus standi to initiate criminal action in respect of the property belonging to Mrs.Meera Bai Dawson is that after the death of Mrs.Meera Bai Dawson without leaving any legal heirs, the property vested with the Government by reason of escheat under Article 296 of the Constitution of India and therefore, the property becomes, the public property and therefore, any person can initiate action when a public property is grabbed by committing the offence of forgery and fraud. The learned counsel for the second respondent relied upon the judgment reported in (2012) 1 SCC 476 in the case of Union of India and others Versus Ramesh Gandhi, in support of his contention. In the said judgment, it has been held as follows:-

23. Again in A.V. Papayya Sastry and Ors. Vs. Government of A.P. and Ors., AIR 2007 SC 1546, this Court reviewed the law on this position and reiterated the principle. In paras 38 and 39 it was held as follows:

> 38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent Court of Law after hearing the parties and an order is passed in favour of the applicant/plaintiff which is upheld by all the courts including the final Court. Let us also think of a case where this Court does not dismiss Special Leave Petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.
>
> 39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud,(underline supplied), it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non- existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as nonest by every Court, superior or inferior.

If a judgment obtained by playing fraud on the Court is a nullity and is to be treated as non est by every Court superior or inferior, it would be strange logic to hear that an enquiry into the question whether a judgment was secured by playing fraud on the Court by not disclosing the necessary facts relevant for the adjudication of the controversy before the Court is impermissible. From the above judgments, it is clear that such an examination is permissible. Such a principle is required to be applied with greater emphasis in the realm of public law jurisdiction as the mischief resulting from such fraud has larger dimension affecting the larger public interest. Therefore, the conclusion reached by the judgment under appeal that no Court can examine the correctness of the contents of the impugned FIR, is unsustainable and without any basis in law. The very complaint in the FIR is that the judgment of the Calcutta High Court, as affirmed by this Court, is a consequence of a deliberate and dishonest suppression of the relevant facts necessary for adjudicating the rights and obligations of the parties to the said litigation

24. Coming to the question as to what amounts to securing a judgment by playing fraud in the Court- In Chengal Varaya Naidu (supra), this Court categorically held that the non-disclosure of all the necessary facts tantamounts to playing fraud on the Courts. At para 6 of the said judgment, it was held as follows:

"..............If he withholds a vital document in order to gain advantage on the other side then he would he guilty of playing fraud on the court as well as on the opposite party."

29. In the above judgment, it is made clear that it is not open to the party to the judgment to approach any Court or authority to review or recall or reconsider the order and further held that the above principle was subject to exception of fraud. It is only held that once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated and such order cannot be be held legally valid or in consonance with law and it is non-existence, non-est and cannot be allowed to stand. Therefore, only after establishing that the order was obtained by a successful party by practising or playing fraud such order has no legal existence and must be considered as non-est.

30. In the judgment reported in AIR 1960 SC 866 in the case of R.P.Kapur Vs. State of Punjab, it is held as follows:-

> "...... However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under s. 561-A the High Court

would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.”

31. In the judgment reported in AIR 1992 SC 604 in the case of State of Haryana and others Vs. Ch.Bhajan Lal and others, the following guidelines are laid down in exercising the inherent jurisdiction under section 482 of Cr.P.C.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the

concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

32. In the judgment reported in (2009) 8 SCC 751 in the case of Mohammed Ibrahim and others v. State of Bihar and another, it is held as follows:-

8. This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. [See: G. Sagar Suri v. State of U.P. [2000 (2) SCC 636] and Indian Oil Corporation vs. NEPC India Ltd. [2006 (6) SCC 736].

33. In the judgment reported in AIR 2008 SC 247 in the case of All Cargo Movers (I) Pvt.Ltd., V. Dhanesh Badramal Jain & Another, it is held as follows:-

17. .... Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie cannot notice the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court. Superior Courts while exercising this power should also strive to serve the ends of justice.

34. In the judgment reported in AIR 1999 SC 1216 in the case of Rajesh Bajaj v. State NCT of Delhi and others, while dealing with a case where the High Court had quashed an F.I.R., the Hon'ble Apex Court opined that the facts narrated in the complaint petition may reveal a commercial transaction or a money transaction, but that is hardly a reason for holding that the offence of cheating would emerge from such a transaction. Proceeding further, the Bench observed thus:-

> 11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

35. In the judgment reported in (2009) 1 SCC 516 in the case of R.Kalyani v. Janak C.Mehta and others, it is held as follows:-

> 9. Propositions of law which emerge from the said decisions are :
>
> (1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.
>
> (2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.
>
> (3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.
>
> (4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

36. In the judgment reported in (2012) 10 SCC 303 in the case of Gian Singh v. State of Punjab and another, it is held as follows:-

> 55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

37. In the judgment reported in (2004) 13 SCC 421 in the case of Mahar Jahan and others v. State of Delhi and others, the Hon'ble Supreme Court while dealing with the proceedings under section 145 of the Cr.P.C., held as follows:-

> This Court noticed that a civil dispute was given the colour of a criminal case. As therein a proceeding under Section 145 of the Code of Criminal Procedure was pending, when a civil suit was also pending before a competent court of law, it was opined:
>
> > "4. It is not disputed by the learned counsel for the parties that this very property which is the subject-matter of these criminal proceedings is also the subject-matter of the civil suit pending in the civil court. The question as to possession over the property or entitlement to possession would be determined by the civil court. The criminal proceedings have remained pending for about a decade. We do not find any propriety behind allowing these proceedings to continue in view of the parties having already approached the civil court. Whichever way proceedings under

Section 145 CrPC may terminate, the order of the criminal court would always be subject to decision by the civil court. Inasmuch as the parties are already before the civil court, we deem it proper to let the civil suit be decided and therein appropriate interim order be passed taking care of the grievances of the parties by making such arrangement as may remain in operation during the hearing of the civil suit."

It was furthermore observed:

"7. We have simply noted the contentions raised by the parties. The civil court, in our opinion, would be the most appropriate forum to take care of such grievances and pass such interim order as would reasonably protect the interests of both the parties. The civil court may issue an ad interim injunction, may appoint a Commissioner or Receiver or may make any other interim arrangement as to possession or user of the property which is the subject-matter of proceedings in the civil court exercising the power conferred on it by Sections 94 and 151 of the Code of Civil Procedure."

38. In judgment reported in (2010) 8 SCC 383 in the case of Meghmala & Ors vs G.Narasimha Reddy & Ors, the Hon'ble Supreme Court dealt exhaustively with fraud, misrepresentation and held that once fraud is proved, all the advantages gained by playing fraud can be taken away.

39. Therefore, from the judgments, it is made clear that it has to be established that the order was obtained by a successful party by practising fraud or playing fraud and once fraud is proved, all the advantages given by playing fraud upon the Court can be taken away. Therefore, at the first instance , it has to be established or proved that fraud had been practised upon the Court and the order was obtained by practising such fraud. In this case, except alleging that fraud has been practised, forgery has been committed, no material has been given by the second respondent to arrive at the conclusion that the Letters of Administration granted by this Court in O.P.No192 of 2003 was obtained by fraud or by false representation or by suppression of certain material facts. The second respondent proceeded on the basis of surmises and conjectures and presumed fraud has been practised upon this Court in getting the Letters of Administration in respect of the property of Mrs.Meera Bai

Dawson and therefore, the Letters of Administration cannot be considered and it is non-est in law and once there is no Letters of Administration in respect of the property of Mrs.Meera Bai Dawson, the property became the property of Government by reason of escheat. In other words, the second respondent claims locus standi mainly on the ground that the property became the property of the State by reason of escheat as Mrs.Meera Bai Dawson died issueless.

40. To understand the contention of the learned counsel for the second respondent, we will have to first understand the law of escheat.

41. Article 296 of the Constitution of India reads as follows:-

> 296. Property accruing by escheat or lapse or as bona vacantia Subject as hereinafter provided any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union: Provided that any property which at the date when it wouldhave so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held were purposes of the Union or a State, vest in the Union or in that State Explanation In the article, the expressions Ruler and Indian State have the same meanings as in Article 363.

42. In the judgment reported in (1983) 3 SCC 118 @ 216 in the case of State of Bihar Versus Radha Krishna Singh and others, it is held as follows:-

> 272. It is well settled that when a claim of escheat is put forward by the Government the onus lies heavily on the appellant to prove the absence of any heir of the respondent anywhere in the world. Normally, the court frowns on the estate being taken by escheat unless the essential conditions for esheat are fully and completely satisfied. Further, before the plea of escheat can be entertained, there must be a public notice given by the Government so that if there is any claimant anywhere in the country or for that matter in the world, he may come forward to contest the claim of the State. In the instant

case, the States of Bihar and Uttar Pradesh merely satisfied themselves by appearing to oppose the claims of the plaintiffs-respondents. Even if they succeed in showing that the plantiffs were not the nearest reversioners of late Maharaja, it does not follow as a logical corollary that the failure of the plaintiffs' claim would lead to the irresistible inference that there is no other heir who could at any time come forward to claim the properties.

273. The trial court was wrong in accepting the case of escheat put forward by the appellants without at all considering the well-known rules and considerations governing the vesting of properties in the state by escheat. M.M. Prasad, J. has explained the position very cleary in his judgment and has concluded thus:

"In view, however, of what I have held that the A finding or declaration of the property having vested in the State of Bihar itself cannot be sustained, the question of making a declaration in favour of the State of Uttar Pradesh regarding the property in suit in that State does not arise.

274. We entirely agree with the opinion expressed by the learned Judge on this question. However, we would like to leave this question open without deciding it one way or the other because for the purpose of deciding the appeal it is not at all necessary to go into the question of escheat which may have to be determined when the State of Bihar and Uttar Pradesh come forward to claim escheat in a properly constituted action. The plea taken by both the States on the question of escheat is therefore left undecided.

43. The Hindu Succession Act 1956 contains the same provision in section 29, which reads as follows:-

29 Failure of heirs .—If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the government; and the government shall take the property subject to all the obligations and liabilities to which an heir would have been subject.

44. This has been followed by the Hon'ble Supreme Court in the judgment rendered in AIR 1991 SUPREME COURT 2301 in the case of State of Punjab v. Balwant Singh and others, held as follows:-

> 11. "Section 29 provides as follows: "ESCHEAT "Failure of heirs- If an intestate has no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the Government: and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject."
>
> 12. The property is escheated to the Government when an intestate has left no heir qualified to succeed to his or her property. The property shall devolve on the Government and the Government shall take the property subject to all the obligations and liabilities of the property. It is only in the event of the deceased leaving behind no heir to succeed, the State steps in take the property.
>
> 13. The State does not take the property as a rival or preferential heir of the deceased but as the Lord paramount of the whole soil of the country. In Halsburry's Laws of England, 4th ed. Vol. 17 para 1439 it is stated as follows:
>
> > "To whom land escheated - Escheat in the case of death intestate before 1926 was to the mesne lord is he could be found but, as since 1290 sub-infeudation has been forbidden, in the great majority of cases there was no record of the mesne tenure, and the escheat was to the Crown as the lord paramount of the whole soil of the country."
>
> 14. Section 29, in our opinion, shall not operate in favour of the State if there is any other heir of the intestate. Indeed, Section 29 itself indicates that there must be failure of heirs. 'Failure' of heirs means the total absence of heirs to the intestate. It is important to remember that female Hindu being the full owner of the property becomes a fresh stock of descend. If she leaves behind any heir either under sub-section (1) or under sub-section (2) of Section 15, her property cannot be escheated.

45. Therefore, before claiming that the property became the property of the State by reason of escheat, heavy onus lies on the Government to prove the absence of any heir to the deceased any where in the world. Further, before the plea of escheat can be entertained, there must be a public notice given by the Government so that if there is any claim any where in any quarter or for that matter, he may come forward to contest the claim of the State. It is only in the event of the deceased leaving no legal heir, the State steps in to take the property. 'Failure' of heirs means the total absence of heirs to the intestate and if the deceased leaves behind any heir under sub-section (1) or under sub-section (2) of Section 15 of the Hindu Succession Act, her property cannot be escheated. Therefore, as it is seen from the above judgments and the provisions of Article 296 of the Constitution of India and section 29 of Hindu Succession Act, 1956, there is no question of automatic vesting of the property with the Government when any person dies intestate without leaving any heir. First of all, it has to be established that the deceased died without leaving any heir and she died intestate. In this case, admittedly, Mrs.Meera Bai Dawson who was the owner of the property left a Will dated 30.11.1993 executed at London and there is no dispute regarding the last Will and Testament executed by Mrs.Meera Bai Dawson on 30.11.1993. Therefore, Mrs.Meera Bai Dawson did not die intestate. She died leaving a Will. Therefore, we will have to see whether the law of escheat can be applied in respect of the property belonging to Mrs.Meera Bai Dawson.

46. A reading of the Will would make it clear that under the Will she bequeathed all her property whatsoever and wheresoever to her husband absolutely. It is admitted that her husband pre-deceased her. Under the said Will, she also appointed Henry Frank Blackman and Howard Golder partners in the firm Blackman and Blackman Solicitors to be the Executors of the Will. She also made it clear that if the named Executors who are partners of M/s.Blackman and Blackman Solicitors, predeceased her or for any reason be unable or unwilling to act as Executors, the other partners at the date of her death in the firm of M/s.Blackman and Blackman or such other firm succeed to or carrying on its practice as Executors shall prove her Will. She also made it clear in Paragraph 3 of her Will that a sum of two thousand and one pounds was bequeathed to Shri Venugopala Swami (Sankarapuram Swamigal) Jayanthi Utsava Committee and directed the said sum to be invested by the Executors and the income derived there from should be used for the purpose of providing one free meal a day to the destitute people of Madras and the rest and residue of her estate unto the Salavation Army of 101, Queen Victoria Street, London. In Paragraph 4, she also mentioned that there is nothing provided for her relatives in India as she proposed to make a separate Will to dispose of her property in India to her relatives and she also felt that her Indian relatives have no legal or moral claim upon her bounty in respect of her English property with which

they have no connection. Therefore, she admitted that she has got relatives in India and though she has not given any detail about the nature of relations, the fact remains that she had relatives in India and it is a question to be considered whether they are entitled to succeed to her estate as per the provisions of the Hindu Succession Act, 1956 or Indian Succession Act, 1925. It is not known whether Mrs.Meera Bai Dawson became a Christian having married a Christian. But, in Paragraph 3, there is an indication that she continued to be a Hindu as she donated 2001 pounds to Shri Venugopala Swami (Sankarapuram Swamigal) Jayanthi Utsava Committee for the purpose of poor feeding on the Jayanthi Day.

47. It was argued by the learned counsel for the second respondent that in Paragraph 4 of the Will she has stated that she would execute a separate Will in respect of her property in India and admittedly, she has not executed any Will and therefore, insofar as the Indian property is concerned, she died intestate without leaving any heirs and therefore, the property became the property of the Government by reason of escheat.

48. According to me, such an interpretation cannot be accepted. It is a fundamental law that Will has to be read as a whole and in Pragraph 2, she has made it very clear that she bequeathed all her property whatsoever and wheresoever to her husband absolutely. Admittedly, her husband predeceased her. Therefore, she became the absolute owner of the property at the time of execution of the Will and she also gave a residue of her estate to Salvation Army of 101, Queen Victoria Street, London and therefore, the Salvation Army became the residuary legatee and even assuming that Salvation Army cannot claim to be a residuary legatee, as per Clause 4 of the Will, insofar as the Indian property is concerned, she died intestate. Having regard to the fact that there are relatives to her and when she died as a Hindu, the property, as per Hindu Law, devolves on her father's heir as per provision of section 15 of the Hindu Succession Act as admittedly, she inherited the property from her father. In either way, it cannot be stated that the property of Mrs.Meera Bai Dawson became the property of Government by reason of escheat. Therefore, the contention of the learned counsel for the second respondent that the property became the property of Government and it takes the character of public property and therefore, fraud has been practised in respect of the said property and therefore, the second respondent has got locus standi cannot be accepted. Further, it has to be established that Mrs.Meera Bai Dawson did not leave any heir and the onus is heavily on the Government when it claims escheat of her property.

49. The next submission of the learned counsel for the second respondent was that fraud has been practised on the property of Mrs.Meera Bai Dawson. As stated supra, the learned counsel based his contention regarding the fraud on the following materials:-

(i) Forged power of attorney dated 18.8.2000 alleged to have been executed by Mrs.Meera Bai Dawson was created appointing the second petitioner as her power agent to deal with her property in Door No.15,16 and 19 of L.B.Road, Adyar, Chennai. Thereafter, document confirmation was also forged as if it was signed by Mrs.Meera Bai Dawson permitting the sale of her property towards the award passed in O.A.No.271 of 2001 against M/s.Triven Garments Pvt. Ltd.,. In short, it was submitted by the learned counsel for the second respondent that fraud has been practised by forging the signature of Mrs.Meera Bai Dawson in these two documents and by reason of such fraud, property belonging to Mrs.Meera Bai Dawson was substituted for the property which was brought to sale pursuant to O.A.No.271 of 2001. At this juncture, there is no need to go into the fradulent aspect or forged signature of Mrs.Meera Bai Dawson in respect of the two documents, namely, power of attorney dated 18.8.2000 and the document of confirmation dated 17.8.2001. The reason being the property belonging to Mrs.Meera Bai Dawson was substituted by the order of DRT and sale certificate was issued in favour of M/s.A.R.Housing Pvt.Ltd., as if M/s.A.R.Housing Pvt.Ltd., became the absolute owner of the property belonging to Mrs.Meera Bai Dawson. The said sale certificate was set aside by this Court in W.P.No.39649 of 2002 etc., and in W.A.No.972 to 974 and 1012 of 2005, a Memorandum of Compromise was entered into between the parties to the Writ Petition and Writ Appeals were disposed of on the basis of Memorandum of Compromise recorded in the Writ Appeals. Though it was contended by the learned counsel for the second respondent that even though the Writ Appeals were disposed of on the basis of Memorandum of Compromise, the order setting aside the sale certificate issued by DRT by the learned single Judge in the Writ Petitions was not set aside. As stated supra, while setting aside the sale certificate dated 9.8.2002 by DRT, this Court did not give any finding that the sale certificate granted in respect of the property belonging to Mrs.Meera Bai Dawson was obtained by fraud or by producing forged document. The sale certificate was set aside if any regard to the provisions of 29 of the Income Tax Act and Rules 52 and 53 of the second schedule to the Income Tax Act 1961 and Rule 39, 41 to 47 of the Income Tax (Certificate of Proceedings) Rules 1962. Further, it is admitted that the Will dated 30.11.1993 was executed by Mrs.Meera Bai Dawson in U.K., and the Executors through their power agent applied for the Letters of Administration in respect of her property in India by giving details of the property in India and the Letters of Administration was also ordered by this Court in O.P.No.192 of 2003 and that Letters of Administration was not revoked and as a matter of fact, M/s.A.R.Housing Pvt.Ltd., filed A.No.481 of 2005 in O.P.No.192 of 2003 for cancellation of the Letters of Administration and that was dismissed holding that there was no caveatable interest. The second respondent having realised that he cannot file any Application to revoke the Letters of Administration or cancellation of the Letters of Administration by applying to the Court as he has no caveatable interest has alleged fraud and forgery out of his figment of motivation and to spite the petitioners and other accused who were successful in getting the property of Mrs.Meera Bai Dawson through legal process, filed Crl.O.P.No.19095 of 2010 for a direction to register a case as if fraud has been committed and forged documents were used in getting the Letters of Administration and unfortunately, this Court also without going into the details about the fraudulent acts committed by the second respondent and malafide action of the second respondent in approaching the Court in getting a direction, gave a direction to conduct enquiry and register a case if any cognizable offence is made out.

50. In this connection, it is pertinent to mention that the second respondent filed W.P.No.16400 of 2012 against the Government Departments and its various officers, CMDA, Triven Garments Ltd., represented by the second petitioner herein, the Executors of Mrs.Meera Bai Dawson, power agents appointed by the Executors, the first petitioner herein, the purchasers of Mrs.Meera Bai Dawson's property under the sale deed executed by Executors represented by power agent and two others seeking for a direction directing the Government authorities to take possession of the property belonging to Mrs.Meera Bai Dawson situated in T.S.No.11 Block No.21, Old Survey No.63 measuring acre 2.27 and T.S.No.9/1, Block No.21, Old Survey No.21, measuring acre 1.40, reiterating the very same allegation made in the complaint given in Crl.O.P.No.19095 of 2010, and that Writ Petition was dismissed by the Division Bench of this Court as the Writ Petition was filed as a public interest litigation and while dismissing the said Writ Petition, the Division Bench held as follows:-

> 5.On perusal of the entire records, we see no reason to entertain the writ petition for the reason that there are number of litigations pending at the instance of the petitioner both Civil and Criminal and also under the Arbitration Act. On going through the entire materials, we find that the petitioner himself is a developer and having interest over the property in dispute, he invented a novel method by way of filing the present writ petition to knock out others from this property and also for development purpose.

51. Therefore, it s clear from that judgment that the second respondent himself is a developer and having interest over the property in dispute, he invented a novel method by way filing the present petition to knock out others from this property and also for development purpose. Though this order was taken in Appeal to the Supreme Court, the Supreme Court dismissed the SLP, holding that dismissal of SLP would not affect the other step taken by the petitioner, namely, the second respondent herein. This was taken advantage by the learned counsel for the second respondent to contend that as per the liberty given by the Hon'ble Supreme Court, he has filed Criminal O.P. No.19095 of 2010 for a direction. According to

me, the other steps to be taken up by the second respondent did not mean filing the criminal complaint without any basis and it would only mean that the second respondent was given liberty to take steps to cancel or revoke the Letters of Administration or to file a suit for declaration that the Letters of Administration obtained by the Executors in O.P.No.192 of 2003 was not a valid one as it was obtained by fraud and by producing forged documents.

52. According to me, once the Letters of Administration was granted by this Court, it is binding on all the parties and if any person challenges the Letters of Administration, he has to approach the Court by making necessary pleas as permissible under law. The second respondent having learnt that he has no caveatable interest and therefore, he cannot file an Application to cancel or revoke the Letters of Administration, found out a novel method as observed by the Hon'ble Division Bench of this Court in W.P.No.16400 of 2012 by alleging fraud and forgery in obtaining the Letters of Administration. As stated supra, the second respondent has no personal interest in the property of Mrs.Meera Bai Dawson and no materials were furnished by the second respondent to substantiate his allegation of fraud and forgery in obtaining the Letters of Administration. So long as the Letters of Administration is valid, the Executors are entitled to sell the property belonging to Mrs.Meera Bai Dawson. Admittedly, they sold the property to M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., under the sale deed dated 22.2.2007 and thus M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., became the absolute owner of the property. It is contended by the learned counsel for the second respondent that in the sale deed in favour of M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., M/s.A.R.Housing Pvt.Ltd., was made as a confirming party and there was no need for making M/s.A.R.Housing Pvt.Ltd., as confirming party and sale consideration was paid by the first petitioner and that would prove fraudulent action. According to me, the argument is liable to be rejected. Admittedly, the sale certificate was issued by DRT in favour of M/s.A.R.Housing Pvt.Ltd., in respect of the property belonging to Mrs.Meera Bai Dawson and though the sale certificate was set aside, to convey clear title to the purchaser, the Executors of Mrs.Meera Bai Dawson thought it fit to make M/s.A.R.Housing Pvt.Ltd., as one of the confirming parties and therefore, it cannot be presumed that fraud has been practised in respect of Mrs.Meera Baid Dawson's property on that basis. In this connection, it is pertinent to refer to the suit filed by the Executors of Mrs.Meera Bai Dawson in C.S.No.120 of 2005 against the first petitioner and others and a compromise memo was filed and on the basis of the said compromise, that suit was also settled out of Court. The sale deed was executed in favour of M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., wherein reference was made to the compromise entered in C.S.No.120 of 2005 and also the reason for making A.R.Housing Pvt.LTd., as confirming party in the sale deed. As stated supra, the second respondent

proceeded on the basis that fraud has been practised by the petitioners and others in obtaining the Letters of Administration and he also relied upon the suit filed in C.S.No.120 of 2005 filed by the Executors. It is strange to note that the second respondent is questioning the grant of the Letters of Administration at the instance of the Executors and at the same time, he relied upon the suit filed by the same Executors against the petitioners and others. As stated supra, C.S.No.120 of 2005 was settled out of Court and sale deed was also executed in favour of the purchaser on 22.2.2007. Therefore, in the absence of any complaint given by the Executors, the present complaint initiated at the instance of the second respondent cannot be sustained. According to me, the second respondent has no locus standi to file a complaint without establishing fraud or forgery and mere allegation of fraud and forgery is not sufficient to register a complaint when the Letters of Administration was ordered by this Court.

53. In this connection, it is pertinent to refer to the judgment of the Hon'ble supreme Court reported in (2006) 7 SCC 416 in the case of Hamza Haji Versus State of Kerala and another, wherein it is held that when a decision is vitiated by fraud, the proper course would be to approach the Court which had rendered the decision for redressal. In this case, serious allegations of fraud and forgery are alleged in respect of the grant of Letters of Administration and no attempt was made to revoke or cancel the Letters of Administration. It is also seen from the typed set of papers filed by the petitioners that a case has been registered in Crime No.629 of 2005 on the complaint given by Kanagaraj, power agent of the Executors of Mrs.Meera Bai Dawson for offence under sections 465 and 467 r/w 120(B) IPC against the petitioners and others and in that complaint, allegations of fraud were made against the accused and the police after investigation filed a final report stating that the defacto complainant, namely, power agent of the Executors did not co-operate with enquiry and the accused named in that case filed documents and those documents were perused and the investigating officer came to the conclusion that there was no proof for the alleged irregularities or alleged offences committed by the accused and referred the case as a mistake of fact. Crime No.96 of 2010 was filed by Nagarajan against the second respondent/defacto complainant before the IV Team, Central Crime Branch, Egmore, Chennai and the second respondent filed Crl.O.P.No.8575 of 2010 to quash the same and that petition was dismissed on 29.07.2010. The first petitioner filed Crl.O.P.No.14032 of 2011 for further investigation in Crime No.96 of 2010 and that was disposed of by directing further investigation by CBCID Chennai, by order dated 28.9.2011. During the pendency of Crl.O.P.No.8575 of 2010 and during the investigation of Crime No.629 of 2005, the second respondent having realised that the case filed against him in Crime No.96 of 2010 will not be quashed and the case in Crime No.629 of 2005 initiated by the power agent of the Executors would be referred as a mistake of fact as the police found no materials to proceed against the petitioners, the

disgruntled second respondent clubbed two more instances as if they have got relevance to each other and presented a complaint as if fraud has been practised by the petitioners and others in obtaining the Letters of Administration in respect of the property belonging to Mrs.Meera Bai Dawson.

54. In this connection, it is pertinent to refer to the judgments reported in AIR 1960 SC 866 in the case of R.P.Kapur Vs. State of Punjab and AIR 1992 SC 604 in the case of State of Haryana and others Vs. Ch.Bhajan Lal and others. In the case of Ch.Bhajan Lal and others, the Supreme Court laid down seven parameters for exercising the inherent jurisdiction under section 482 of the Cr.P.C. and held in clause 7 where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the F.I.R.can be quashed. As stated supra, the second respondent/defacto complainant attempted to get the property of Mrs.Meera Bai Dawson by hook or crook and his attempt to knock out others from getting the property was exposed by the Division Bench of this Court in W.P.No.16400 of 2012. Further, a case was registered against the second respondent in Crime No.96 of 2010 by the brother of the second petitioner and those facts would prove that the second respondent has got personal grudge against the petitioners and having realised that he would not get the property, he has filed the petition before this Court in Crl.O.P.No.19605 of 2010 by suppressing the case filed against him and also by making false accusation as if fraud has been committed without furnishing any proof. As a matter of fact, while directing the police to conduct enquiry into the complaint given by the second respondent, this Court found the following disturbing factors:-

> "35. The disturbing factors in dealing with the property are as follows;
>
> i) the sale agreement dated 22.6.1999 was in favour of M.s Tirven Garments Private Limited represented by its Director L.S. Abinesh Babu.
>
> ii) without any benefit, a mortgage by deposit of title deeds was created by Mrs.Meerabai Dawson in favour of Global Trust Bank Limited for the loan facilities of the agreement holder through a document dated 18.10.1999.
>
> iii) a power of attorney in favour of the above said person dated 18.8.2000 was also executed and on the basis of power of attorney, various documents of the property were deposited by L.S. Abinesh Babu on 27.8.2000.

iv) a letter of confirmation dated 17.8.2001 was signed by Mrs.Meerabai Dawson.

All these documents are on India Non-Judicial Stamp Papers , but signed by Meerabai Dawson at Middlesex, London in the presence of a Commissioner for Oath of England and Wales.

(v) An affidavit of Meerabai was filed before this Court in OP No.93/1975 (in the matter of grant of Letters of Administration of Vedamma Rangachari - mother of Meerabai Dawson). This affidavit was sworn on 21.8.2002 and was numbered as Application No.3804 of 2002 on which date Meerabai Dawson was not alive.

(vi) The property was substituted in an auction sale which was purchased by A.R. Housing Private Limited represented by Govindarajulu.

(vii) One Sivananatha raj, Power of Attorney of Executors of the Will of Mrs.Meera Bai applied for Letters of Administration based on the Will which specifically excludes her property in India.

(viii) A.R. Housing Private Limited filed an application for revocation of Letters of Administration and this Court dismissed the application as he had no caveatable interest.

(ix) In pursuant to the Letters of Administration, one Raghul Suresh Narvekar and Subash had sold the property for rupees 20 crores when the market value of the property as per sale deed was rupees 64 crores.

(x) A.R. Housing Private Limited is shown as confirming party.

(xi)The financial arrangements are mind boggling.

(xii)Lastly, under FEMA and FEM Acquisition Regulation, the money which was actually payable to the Executors in London,U.K. being the sale consideration of the property of a non resident, can not be repatriated without the permission of The Reserve Bank of India."

55. The disturbing factors, namely (1) to (iv) and (vi) were dealt with in W.P.No.39649 of 2002 and the sale certificate was set

aside. As already stated while setting aside the sale by DRT, this Court did not give any finding that fraud has been practiced in obtaining power and confirmation from Mrs.Meera Bai Dawson in the manner of substitution property and the auction sale was set aside with reference to Income Tax Rules. Further, clauses (ix) and (x) mentioned in the disturbing factors cannot be investigated by the first respondent. Further , when the law is clear that property of a person who dies without any legal heir will not automatically vest with the Government and heavy burden lies upon the Government to prove that the person died without legal heirs, the presumption that the land belonging to Mrs.Meera Bai Dawson vested with the Government and therefore, it becomes Government property and hence, the second respondent has locus-standi is not legally correct. Thereafter,
the Executors entered into the memo of compromise with M/s.A.R.Housing Pvt.Ltd., and executed a sale deed in favour of M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., in the year 2007 and the withdrawal of the suit in C.S.No.120 of 2005 and the memo of compromise entered into between the Executors of Mrs.Meera Bai Dawson and M/s.A.R.Housing Pvt.Ltd., were conveniently suppressed by the second respondent and on the basis of picture shown by the second respondent by suppressing the material facts and by projecting false and irrelevant allegations, this Court was pleased to direct the police to conduct enquiry and the police also without conducting any enquiry blindly registered a case without appreciating the fact in respect of the same set of facts, Crime No.629 of 2005 was closed as mistake of fact. Therefore, it is clear from the above discussion that the second respondent has no locus standi and as a matter of fact, his attempt to purchase the property belonging to Mrs.Meera Bai Dawson ended in failure and to take vengeance, he has given the complaint and he suppressed the earlier proceedings in W.P.No.39469 of 2002 etc., and the memo of compromise filed in W.A.Nos.972 to 974 of 2005 and 1012 of 2005 and the sale by the Executors of Mrs.Meera Bai Dawson in favour of M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd.,. Though the criminal law can be set in motion by any person, however, in respect of the property belonging to a private person, only the person aggrieved has got a right to initiate action, and any other party like the second respondent cannot poke his nose in respect of the property belonging to private individual as if the private individual was cheated and fraud has been committed in respect of his property and the signature was forged. As stated supra, the entire complaint proceeded on the basis that the property became the property of the Government by reason of escheat and therefore, the second respondent has got locus standi. When the property did not come to the Government by reason of escheat, then the second respondent has no locus standi even on his own admission.

56. It is admitted that in W.P.No.16400 of 2012 filed by the second respondent herein, he made the very same allegations of fraud and forgery against the petitioners and the other accused and sought

for a direction to conduct enquiry on the complaint preferred by him dated 2.7.2010 and the Hon'ble Division Bench of this Court dismissed the Writ Petition holding that they did not find any reason to entertain the Writ Petition as there are number of litigations pending at the instance of the petitioners both civil and criminal and also under the Arbitration Act and they also found that the petitioner himself, namely, the second respondent herein, was a developer and having interest over the property in dispute and he invented a noval method by way of filing the present Writ Petition to knock out others from this property and for the development of the property. Further, the Executors of Mrs.Meera Bai Dawson filed C.S.No.120 of 2005 against the petitioners and others including Global Trust Bank and Registrar of Properties, represented by the Sub Registrar of Properties, Adayar, making allegations of fraud and forgery in respect of the documents alleged to have been executed by Mrs.Meera Bai Dawson and prayed for declaration that the documents purporting to create, authorise, acknowledge or permit the mortgage of the property belonging to Mrs.Meera Bai Dawson and described in Schedule-B is null and void and the Executors withdrew the suit and also sold the property to M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., wherein A.R.Housing Property was a confirming party. The learned single Judge proceeded on the basis that by reason of escheat, property devolved on the Government which is not a correct position having regard to the judgments referred to above. Further, as per the judgment of the Hon'ble Supreme Court in the judgment rendered in State of Haryana and Ors. V. Ch.Bhajan Lal and Others (supra) wherein where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, FIR can be quashed.

57. As stated supra, the second respondent who gave the complaint attempted to get property by hook or crook and he also filed W.P.No.16400 of 2012 making the very same allegations and that Writ Petition was dismissed by the Division Bench of this Court holding that he has got personal grude and therefore, applying the principles of laid down in the judgment rendered in State of Haryana and Ors. V. Ch.Bhajan Lal and Others (supra), the FIR is liable to be quashed. Further, the Executors of Mrs.Meera Bai Dawson represented by their Power Agent gave a complaint which resulted in the registration of Crime No.629 of 2005, which was referred to as mistake of fact by the very same police after conducting enquiry after perusing the documents filed by the accused stated therein and the defacto complainant in that complaint did not co-operate and the crime was referred to as mistake of fact. The letters of administration was granted in O.P.No.192 of 2003 by this Court in respect of the property of Mrs.Meera Bai Dawson and even assuming that the Will executed by Mrs.Meera Bai Dawson did not deal with properties in India as contended by the learned counsel appearing for the second respondent without revoking the Letters of

Administration, it cannot be contended that the Letters of Administration was obtained by fraud or by forgery. According to me, a reading of the Will executed by Mrs.Meera Bai Dawson would make it clear that the Will covers all her property whatsoever or wheresoever and the residuary legatee was given to Salvation Army and Salvation Army also accepted the Executors' right to deal with the property and gave permission to them to sell the property and the property was sold by the Executors pursuant to the Letters of Administration granted by this Court to M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., and therefore, the sale cannot be challenged on the ground of fraud. According to me, if at all, the allegations of fraud alleged by the second respondent are to be considered, the second respondent has to file a suit to set aside the sale deed executed in favour of M/s.Vicoans Infrastructure and Environment Engineering Pvt.Ltd., or to file an Application to revoke the Letters of Administration. The second respondent having realised that he cannot file such a suit to set aside the sale or file an Application to revoke the Letters of Administration, has filed Criminal O.P.No.19095 of 2010 and got the direction.

58. Therefore, I am of the opinion that no materials have been furnished or provided by the second respondent to substantiate his allegations of fraud and forgery. Having regard to the order passed by this Court in O.P.No.192 of 2003, and the order passed by the police on the complaint given by the power agent of the Executors which resulted in registration of Crime No.629 of 2005 against the petitioners as a mistake of fact and having regard to the fact that the case registered in Crime No.96 of 2010 against the second respondent in which further investigations are ordered, would lead to the conclusion that the present complaint was given by the second respondent out of personal vengeance and the first respondent police on investigation ought not to have registered the case.

59. In the result, Crl.O.P.No.8645 of 2011 is allowed and FIR in Crime No.450 of 2011 on the file of the Sub-Inspector of Police, Central Crime Branch, Vepery, Chennai, is quashed. As the FIR in Crime No.450 of 2011 is quashed, the petition in Crl.O.P.No.4739 of 2011 filed by the second respondent is dismissed as infructuous.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Director General of Police,
Government of Tamilnadu,
Chepauk, Chennai.

2.The Commissioner of Police,
Greater Chennai City,
Chennai - 600 002.

3.The Deputy Commissioner of Police,
Central Crime Branch,
Greater City, Chennai - 600 008.

4.The Assistant Director,
Directorate of Enforcement,
Shastri Bhavan,
3rd Floor, 3rd Block, No.26,
Haddows Road,
Chennai - 600 006.

5.The Sub-Inspector of Police,
Team-18A, Central Crime Branch,
Vepery, Chennai - 600 007.

6.The Public Prosecutor,
High Court, Madras.

7.The Special Public Prosecutor,
High Court, Madras.

+2 cc to M/s.Pl.Narayanan, Advocate,SR.27082

+4 cc to M/s.Nathan and Associates,Advocate,SR.27148

+1 cc to M/s.M.Dhandapani, Spl.Public Prosecutor, SR.26821.

Ca(co)
krd 10/6

Order in
Crl.O.P. Nos.8645 of 2014
and 4739 of 2011