* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment pronounced on: 7th January, 2016***

\+ **CRL.M. C. 651/2015 & Crl. M.A. No.2491/2015**

MRS. NANDA KHEMKA & ANR. ..... Petitioners

Through Mr.S.K. Sharma, Adv. with Mr.Yugant Kuhan, Mr.Prayas Aneja & Mr.Archit Vasudeva, Adv. for P-1 Mr.Manav Gupta, Adv. with Ms.Esha Dutta & Mr.Avinash Sharma, Adv. for P-2.

versus

STATE (NCT) DELHI & ANR ..... Respondents

Through Mr.Ravi Nayak, APP for the State along with SI Vinod, PS Vasant Kunj (south) in person. Mr.Sunil Mittal, Adv. and Mr.Saket Sikri, Mr.Aman Sareen & Mr.Rajeev Duggal, Advs for R-2.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. Petitioner No.1 Mrs.Nanda Khemka, wife of Sh.Gopal Khemka and petitioner No.2 Mrs.Sameera Aggarwal, wife of Sh.Ajay Aggarwal, have filed the present petition under Section 482 Cr.P.C. for quashing of FIR No.109/2015, Police Station Vasant Kunj (South), under Sections 406/420/34 IPC.

2. Status report has been filed. The main contents of the complaint recorded in the said status report reads as under.

"It is stated that on 29.1.15, Case FIR No. 109,U/S 420/406/34 IPC, was registered at P.S Vasant Kunj South, on the complaint of Sh Rajesh Aggrawal S/o Sh Lakhpat Rai R/o A-15, Bhagwan Das Nagar, East Punjabi Bagh, New Delhi, stating therein that in the month of April, 2010, Smt.Nanda Khemka, approached 'him along with the property agent Shri Rajat Tiwari, S/o Shri Arun Tiwari, R/o B-219, Vasant Kunj Enclave, New Delhi and represented him that she is the absolute owner of a plot of land measuring 4400 sq yards., khasra No.1083, situated in Ruchi Vihar, Rangpuri, New Delhi and deal was struck through the said property dealer in a sum of Rs.3,52,00,000/-. and it was also decided that initially One Crore will be paid as earnest amount. Complainant further stated that on 25.4.10, he had visited the residence of Smt. Nanda Khemka situated at C-5/16, Safdarjung Development Area, New Delhi to execute the deal where Rajat Tiwari was already present there along with Smt Nanda Khemka and they put before him a Receipt to which he objected as the same did not either bear the date; or contained any Khasra number, description of property, witnesses and terms and conditions regarding raising of wall and for obtaining the NOC from the concern department. On his objection, in the presence of the accused Smt.Nanda Khemka, the property agent Shri Rajat Tiwari completed the said documents by writing date, khasra number, description of property, terms and conditions and he also witnessed the said document. The hand-written portion of the receipt is in the hand-Writing of the said property dealer Shri Rajat Tiwari. After the said receipt was thus completed, the complainant paid the sum of Rs.l,00,00,000/- in cash to Smt.Nanda Khemka and also gave a photocopy of receipt-cum-agreement to her.

Complainant further stated that he entered in the deal with the alleged Smt. Nanda Khemka on the assurance that she is the absolute owner of the said property but later events revealed that she was not the owner of the said property. Had the said accused Smt.Nanda Khemka not made this false representation to him, that she was the owner of the property, he would not have advanced her such a heavy amount of Rs.1,00,00,000/- as earnest money (Bayana). Later events revealed that it was not Smt.Nanda Khemka, but her daughter Smt.Sameera Aggarwal, who was the owner of the said property. Therefore, the complainant continued persuading Smt.Nanda Khemka that she should complete the formalities and obtain the No Objection Certificate and complete the deal , but she continued putting the complainant away under one pretext or the other and ultimately the Complainant issued a notice dated 2.5.2014 to Smt.Nanda Khemka. The said notice was duly received by Smt.Nanda Khemka but she did not care to give any reply and ultimately the complainant filed a suit for Specific Performance being CS(OS) No.1831/2014 before the Hon'ble High Court of Delhi titled Rajesh Aggarwal vs. Smt.Nanda Khemka.

Complainant further stated that Smt.Nanda Khemka filed her written statement in the said suit along with certain documents. It was for the first time after reading the written statement and going through the documents attached with the said written statement that the complainant came to know that it was not Smt.Nanda Khemka but her daughter Smt.Sameera Aggarwal who was the owner of the property in question. It was neither revealed to him nor incorporated in the said Receipt-cum-Agreement dated 25.4.2010 that Smt.Nanda Khemka was the alleged attorney of Smt Sameera Aggrawal i.e. her daughter. Even after receipt of notice dated 2.5.2014, the complainant was not informed that Smt.Nanda Khemka was the attorney and the complainant only learnt Now he learnt from the documents filed by Smt.Nanda Khemka alongwith her written statement in the Hon'ble High Court of Delhi that both the accused mother and daughter i.e. Smt.Nanda Khemka and Smt.Sameera Aggarwal respectively have sold the said 4400 sq yards of land being Khasra No.1082 (1-12) and 1083 (4-7) to one Shri Sanjay Chaudhary and Shri Ashwani Kumar. While Smt. Nanda Khemka had filed Assignment Deed dated 2.5.2014 executed in favour of Shri Ashwani Kumar showihg having assigned 3000 sq yards of land in the aforesaid Khasras but has not filed copy of any such Assignment Deed in respect of Shri Sanjay Chaudhary to whom she has alleged to have assigned 1400 sq yards of land in the aforesaid khasras. Although she had filed copy of the Power of

> Attorney dated 1.5.2014 allegedly executed by her daughter Samira Khemka in favour of Shri Sanjay Chaudhary but she has not filed any Assignment Deed of 1400 sq yards of land in favour of Shri Sanjay Chaudhary."

3. The main grounds taken in the present petition are that the complaint/FIR does not disclose any criminal offence at all much less any offence under Section 420/406 IPC. The dispute between the parties is wholly a civil dispute for which the respondent No.2 has already approached the Civil Court. The present complaint was registered after the vacation of interim orders passed in the stay application which was dismissed by the Civil Court on 28th August, 2014. The allegations in the FIR disclose a civil dispute if any between the parties. The FIR has been filed only with the intention to harass and humiliate the petitioners. The civil dispute is sought to be given colour of criminal offence to extort money from the petitioners and it does not meet the strict standards of proof required to sustain a criminal acquisition. The FIR does not satisfy any of the ingredients of Section 420/406 IPC because it is not the case of the respondent No.2 that the real owner i.e. petitioner No.2 is disowning the act of the petitioner No.1.

4. It is established law that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at the face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of

justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. However, there are some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. 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. But at the same time merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there is always some element of civil nature or in a case where the accused alleges that the transaction between the parties are of a civil nature and the criminal court cannot proceed with the complaint because the factum of document being forged was pending in the Civil Court. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process, a Criminal Court has to exercise a great deal of caution. For the accused it is a serious matter.

5. In view of the above settled law, I have to consider as to whether the present case comes within the exception of the general provisions or whether due process of law has been abused by the complainant on the face value of complaint as alleged in the petition.

6. The brief facts of the case as per the petition, in order to know what is the nature of the dispute are mentioned here as under:

i) The petitioner No.1 is aged about 76 years old having three daughters including the petitioner No.2 and all the daughters of the petitioner No.1 are married and are happily living with their respective families. The petitioner No.2 is a housewife having two children.

ii) The land in question was also purchased by the petitioner No.2 through the broker Arun Tiwari and Rajat Tiwari and they were very well aware about the status of the land as the land in question can only be sold by execution of General Power of Attorney and no NOC is required. Earlier also a piece of land measuring about 6,000 square yards in Khasra No. 1083 situated at Ruchi Vihar, Rangpuri New Delhi was also purchased by the petitioner No.1 in the name of her daughter petitioner No.2 for her benefit who resides at Faridabad, for the purpose of convenience on the advice of broker Arun Tiwari.

iii) Out of the aforesaid land petitioner No.2 sold 1600 sq. yds. land in the year 2007 by General Power of Attorney. The said sale transaction was done through the same broker Arun Tiwari. For the present deed of the suit property, in the month of February, 2010 the same broker approached the petitioner No.1 who wanted to buy the remaining piece of land of 4400 sq.yds. The broker fixed the price of the land and gave a cheque of Rs.2,00,000/- bearing No. 652002 drawn on Corporation Bank dated 20th February, 2010 towards confirmation of the deal. The said cheque was not bearing any name of Drawee/Holder and the said broker requested the petitioner No.1 not to present the said cheque within 90 days, as he will look for a purchaser and will get a formal Bayana/earnest money agreement executed directly between the petitioner No.2 and the proposed buyer.

iv) As Arun Tiwari was known to the petitioners being involved in the sale and purchase of other properties also, petitioner No.1 kept the said cheque as token of confirmation of price. Thereafter, on 25th April, 2010, Arun Tiwari along with respondent No.2 came to the house of the petitioner No.1 and informed that he had finalized the transaction with respondent No.2 and also brought a sum of Rs.98,00,000/- for payment as earnest money.

v) The respondent No.2 after examining the copies of the title document and satisfying himself that petitioner No.1 is the mother of the owner of the suit property and Special Power of Attorney Holder, paid a sum of Rs. 98,00,000/- in cash to the petitioner No.1 and Arun Tiwari asked the petitioner No.1 to execute receipt of Rs. 1 crore i.e. Rs.2,00,000/- already given by cheque by Arun Tiwari and Rs.98,00,000/- paid in cash as petitioner No.2 was not available.

vi) As petitioner No.2 was not available at that point of time, the petitioner No.1 on receipt of sum of Rs. 98,00,000/- in cash and sum of Rs. 2,00,000/- by cheque issued a receipt of Rs.1,00,00,000/- on account of sale of plot measuring 4400 sq.yds for and on behalf of her daughter petitioner No.2 and as her Attorney on 25th April, 2010. In the said receipt, it was nowhere mentioned or represented that petitioner No.1 is receiving the said amount as owner of the said property.

vii) When the receipt was signed by petitioner No.1 there was neither any date nor the column against 'plot bounded as under' was filled and nobody witnessed the same at that point of time. In the said receipt, sale consideration, balance amount after receipt of Rs.1,00,00,000/- and date of final payment was mentioned as 31st May, 2010.

viii) In the receipt the time was the essence of the agreement and the balance payment was to be made on or before 31st May, 2010. Before the aforesaid cheque could have been presented, broker Arun Tiwari in the last week of April 2010 requested the petitioner No.1 not to deposit the cheque and assured that the amount of the cheque will be paid by the proposed purchaser. Accordingly the said cheque was never presented by the petitioners. As the time was the essence of the agreement/receipt and the balance payment was payable on or before 31st May, 2010, the petitioner No.1 called the respondent No.2 and broker Arun Tiwari atleast 4/5 times on their mobile asking them to pay the balance sale consideration but when the respondent No.2 failed to pay the balance sale consideration within stipulated time in terms of the receipt, the advance amount paid by the respondent No.2 stood forfeited.

ix) It is pleaded by the petitioners that respondent No.2 and broker Arun Tiwari entered into this transaction simply on the basis of speculation expecting that they will get a buyer on much higher rate and after selling the land in question to him they will fetch huge profit. Unfortunately, during the relevant period of 3-4 years there was heavy downfall/recession in real estate market on account of which neither respondent No.2 could get a buyer on higher price nor they were themselves in a position to pay the balance sale consideration. Petitioner No.2 sold the land to some third parties and executed General Power of Attorneys on 1st May, 2014 and 2nd May, 2014 and handed over possession of the said land to the purchasers.

7. These are just pleaded facts in the petition, all may not be taken as gospel truth. Counsel for the petitioners has addressed his submissions on the basis of the said averments and on legal points. The Court is aware that the present petition is to be decided only on the basis of the allegations made in the complaint or the FIR even if taken at the face value and accepted in entirety. And the Courts should not decide the petition on disputed and controversial facts as the same cannot be the basis for exercise of the jurisdiction.

8. There are few admitted facts. Let me examine the present case on the facts and law applicable. Admittedly prior to the complaint the respondent No.2 filed a suit, being CS(OS) No.1831/2014 for specific performance and perpetual injunction against the petitioner No.1 along with an interim application under Order XXX Rule 1 and 2 CPC on 1st June, 2014.

9. The suit as well as the application came for hearing before the vacation Judge on 5th June, 2014 who issued notice to the petitioner No.1 on 6th August, 2014 and also granted ex parte injunction in

favour of the respondent No.2. subject to respondent No.2 depositing the balance sale consideration of the property within four weeks.

10. When after service of summons and notice in the application and interim order, the matter was taken up on 28th August, 2014, the following order was passed:

> "Counsel for the defendant submits on instructions that the suit property has been sold prior to the filing of the suit. Counsel has produced in Court a copy of the sale deed to show that the property was sold prior to the filing of the suit i.e. on 1.5.2014. Copy of the sale deed has been handed over to Mr.Duggal, counsel for the plaintiff.
>
> He further submits that the plaintiff was to complete the transaction by 31.5.2010, however the plaintiff did not pay the balance sale consideration. Consequently the defendant has forfeited a sum of Rs.98,00,000/- received by the defendant. Counsel further submits that the receipt filed at page 3 of the documents has been interpolated and two lines have been added after 31.5.2010 to bring the suit within the period of limitation.
>
> Written statement be filed within 30 days. Replication be filed within 30 days thereafter. Parties to file documents within the same period.
>
> List before the Joint Registrar on 3.11.2014 for completion of pleadings and admission/denial of documents.
>
> List before Court on 26.11.2014 for framing of issues. Parties shall bring suggested issues to Court on the next date of hearing. Parties will strictly adhere to the time schedule fixed by the court.
>
> In view of the statement made by the counsel for the defendant, IA No.11451/2014 is dismissed. List the matter on dates fixed."

11. Counsel for the parties have informed that the third party who had purchased the said land from petitioner No.2 has been impleaded in the main suit after the disposal of the application filed by the respondent No.2 under Order I Rule 10 CPC and no appeal was filed

against the order dated 28th August, 2014 by the complainant/respondent No.2.

12. The FIR was registered on 29th January, 2015 after dismissal of the interim application under Order XXXIX Rule 1 and 2 CPC and vacation of interim application. The complaint was filed after the vacation of interim order.

13. It is argued by Mr.S.K. Sharma, counsel appearing on behalf of the petitioners, that respondent No.2 in connivance with Arun Tiwari and his son Rajat Tiwari (property broker) forged the receipt dated 25th April, 2010 by interpolating the same and in order to bring the matter within limitation also added three lines in the said receipts by forging the same. The receipt which was not witnessed by any person was also found to be witnessed by Rajat Tiwari.

The forgery in the receipt is apparent as without such addition in the receipt neither respondent No.2 was entitled to file a suit for recovery nor was he entitled to file a suit for specific performance being time barred which was filed in June, 2014. As in terms of the receipt, on failure of the respondent No.2 to make full and final payment on or before 31st May, 2010, the advance paid by respondent No.2 stood forfeited but to show bonafide of the petitioners, still they offered to pay/refund the sum of Rs.98,00,000/- to the respondent No.2.

14. It is also argued by Mr.Sharma that the respondent No.2 filed a false and frivolous complaint dated 14th October, 2014 against the petitioner Nos.1 and 2. Inspite of receiving documents and details and petitioners' appearances, the Police registered the present FIR on the complaint of the respondent No.2 though no offence is made out. He

also submits that petitioner No.1 is a senior citizen, who is more than 76 years old, but still her bail application was opposed by the respondents. The business of respondent No.2 is to purchase the immovable property and sell the same on higher price. Even during hearing of petition when the settlement talks were being discussed, the suggestion was made by Mr.Sharma on behalf of his clients that without prejudice they are ready to pay a sum of Rs.1,25,00,000/- as full and final settlement to the respondent No.2 towards the transaction. He gave another suggestion that if the respondent No.2 still intends to litigate with the petitioners in the pending civil case, his clients are prepared to deposit the said amount in Court and let the suit be decided on merits. The suggestions of settlement are not acceptable to the respondent No.2 who also wishes to proceed with the present case.

15. Mr.Sunil Mittal, learned counsel for the respondent No.2 has argued that the petitioner No.1 is not the owner of the land. She did not have the authority to deal with the land and thus she could not have received the huge amount of about Rs.1 crore from the respondent No.2. It amounts to clear case of cheating. Secondly he referred the status report wherein it is stated that during the investigation, related documents have been seized from the complainant/ respondent No.2. Notice under Section 91 Cr.P.C. has been served to petitioner No.1 as well as to petitioner No. 2 and the certified self attested copy of the Special Power Of Attorney dated 15th January, 2009 executed by the petitioner No.2 in favour of petitioner No.1 and other related documents have been seized. The alleged Special Power of Attorney was verified from the office of the Divisional Commissioner, Delhi Treasury, Tis Hazari and the SDM/Treasury

Officer stated that the Stamp Paper bearing Sr. NO Y- 247624 denomination of Rs. 50/- had been issued to Shri Anil Behl, stamp vendor on 19th July, 2011, LIC No. 503. However, on 15th January, 2009 Special Power of Attorney was executed on this stamp paper issued on 19th July, 2011. Hence it appears to be a fabricated document.

16. He has also argued that false Special Power of Attorney was prepared by the petitioners in order to cover the offence of the petitioner No.1 in connivance of petitioner No.2 as on the face of it Special Power of Attorney is a manipulated and fabricated document. Therefore, the present petition is not maintainable and further investigation in the criminal complaint is necessary in view of the offences committed by the petitioners. However, he has not denied the fact that the allegations made in the complaint are also subject matter of civil suit. He submits that there is no bar in criminal complaint after filing the civil suit and both the proceedings can continue as per settled law. The accused cannot be allowed to suggest that the transactions are of civil nature.

17. It is observed by Supreme Court in ***Paramjeet Batra v. State of Uttrakhand,*** (2013) 11 SCC 673, "As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by respondent 2 against him alleging offence under Section 406 of the IPC. Possession of the shop in question has also

been handed over by the appellant to Respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise."

18. The Supreme Court in ***All Cargo Movers (I) Pvt. Ltd. and Ors. v. Dhanesh Badarmal Jain and Anr.***, AIR 2008 SC 247 (para 16) observed as under:

> "16. We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, This Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings of the plaintiff-respondent No.1 in the suit. No allegation whatsoever was made against the appellants herein in the notice. What was contended was negligence and/or breach of contract on the part of the carriers and their agent. Breach of contract simplicitor does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. 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."

19. The offences of Section 420 IPC and Section 464 IPC making a false document have been dealt with by the Supreme Court in the case of **Mohd. Ibrahim and Ors. v. State of Bihar and Anr.** (2009) 8

SCC 751. The relevant paras 9 to 16 of the said judgment reads as under:

> “9. The term "forgery" used in these two sections is defined in section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. Section 464 defining "making a false document" is extracted below :
>
> "464. Making a false document.--A person is said to make a false document or false electronic record---
>
> First.--Who dishonestly or fraudulently -
>
> (a) makes, signs, seals or executes a document or part of a document;
>
> (b) makes or transmits any electronic record or part of any electronic record;
>
> (c) affixes any digital signature on any electronic record;
>
> (d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or
>
> Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or
>
> Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any

electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words `digital signature' wherever it occurs were substituted by the words `electronic signature' by Amendment Act 10 of 2009]."

The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

10. An analysis of section 464 of Penal Code shows that it divides false documents into three categories:

> 10.1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.
>
> 10.2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a

document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

10.3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

11. In short, a person is said to have made a `false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

12. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of `false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of `false documents', it is not sufficient that a document has been made or executed

dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted.

Section 420 IPC

13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of

ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

A clarification

15. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. The term `fraud' is not defined in the Code. The dictionary definition of `fraud' is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines `fraud' with reference to a party to a contract. In Dr. Vimla vs. Delhi Administration -

AIR 1963 SC 1572, this Court explained the meaning of the expression `defraud' thus "The expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

The above definition was in essence reiterated in State of UP vs. Ranjit Singh - 1999 (2) SCC 617.

16. The Penal Code however defines `fraudulently', an adjective form of the word `fraud', in section 25, as follows:

"A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise". The term "fraudulently" is mostly used with the term "dishonestly" which is defined in section 24 as follows :

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing "dishonestly". To `defraud' or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

XXXXXXXX

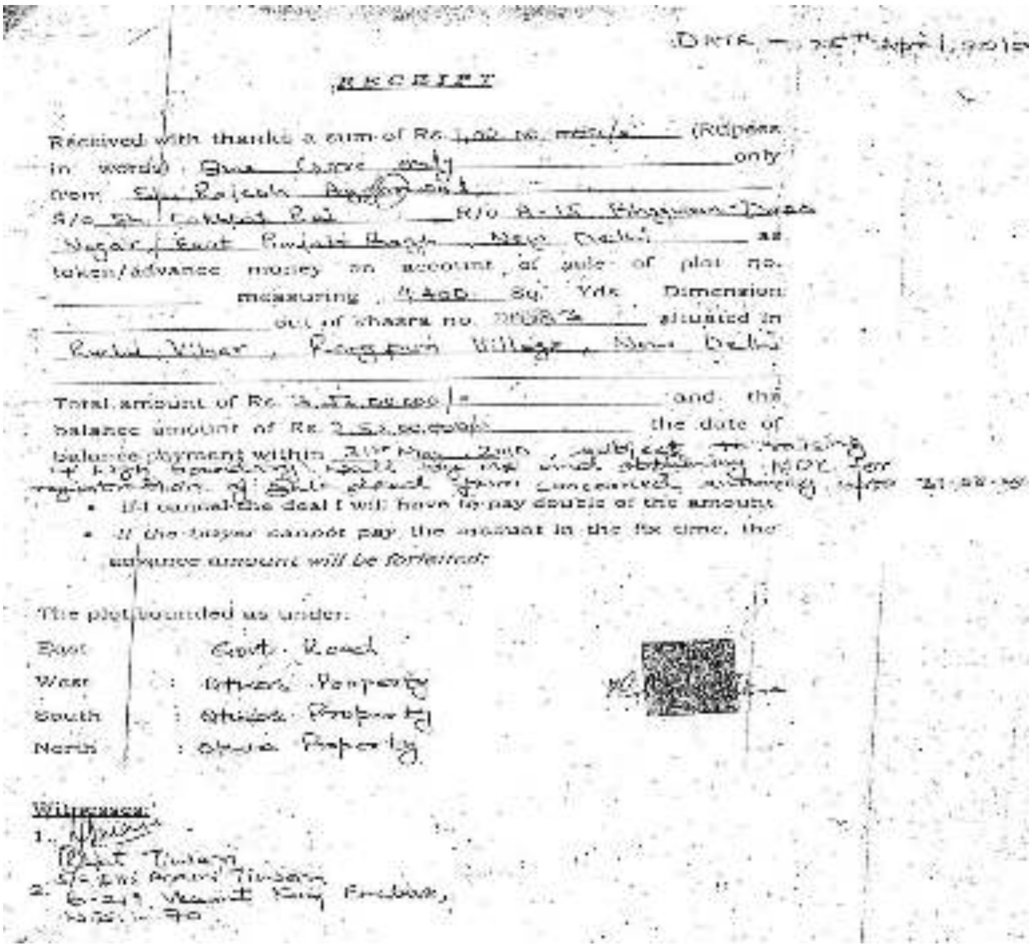
It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.”

20. In ***Hira Lal Hari Lal Bhagwati v. CBI, New Delhi***, (2003) 5 SCC 257, this Court opined as under :

> "It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. It is seen from the records that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it, therefore, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of the GCS clearly indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office-bearers right at the time of making application for exemption . As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 of the Indian Penal Code does not arise. {See also Hira Lal Hari Lal Bhagwati v. CBI, New Delhi [(2005) 3 SCC 670] and Indian Oil Corporation v. NEPC India Ltd. & Ors. [(2006) 6 SCC 736]}."

21. The substance of the complaint filed by the respondent No.2 is that a receipt is signed by petitioner No.1 who had received Rs.1 crore being not the owner of the land. She did not reveal the actual fact that she was not the owner of the property at the time of receiving the amount. The said amount would not have been advanced, thus the cheating is prima facie established.

As already mentioned where the allegations are made in the complaint, the same are to be taken at face value, let the same rule apply in the facts of the present case. The scanned copy of the receipt admitted by the respondent No.2 is reproduced herein below:



DATE – 25th April, 2010

RECEIPT

Received with thanks a sum of Rs. 1,00,00,000/- (Rupees in words) One Crore only only from [illegible] S/o [illegible] R/o [illegible] Nagar, East Punjabi Bagh, New Delhi as token/advance money on account of sale of plot no. measuring 4400 Sq. Yds. Dimension out of khasra no. [illegible] situated in [illegible] Vihar, [illegible] Village, New Delhi

Total amount of Rs. [illegible] /- and the balance amount of Rs. [illegible] the date of balance payment within 31st May, 2010, subject to raising of high boundary wall by me and obtaining NOC for registration of sale deed from concerned authority upto 31.08.10

- If I cancel the deal I will have to pay double of the amount
- If the buyer cannot pay the amount in the fix time, the advance amount will be forfeited.

The plot bounded as under:

East : Govt. Road
West : Others Property
South : Others Property
North : Others Property

Witnesses:
1. [illegible]
2. [illegible]

22. Counsel for the petitioners has submitted that the expressions "subject to raising high boundary wall by me and obtaining NOC for registration of sale deed from concerned authority upto 31st August, 2010" have been added by the respondent No.2 in order to cover the limitation in filing the civil suit as the same is barred by time in view of essence of period fixed upto 31st May, 2010 to pay the balance consideration. Be that as it may, even this Court ignores the said portion pointed out by Mr.Sharma still even if the said receipt is read as a whole and if the face value is taken as true and correct, it is apparent that nowhere the petitioner No.1 had claimed in the said receipt that she is the exclusive owner of the property. It is admitted

that she is the mother of petitioner No.2 who is the owner of the suit property. The petitioner No.2 never made any grievance against the petitioner No.1 by alleging that the petitioner No.1 was not authorized to receive the amount on her behalf. In fact, she has no complaint against her mother.

23. It is a rule of law of evidence, which is also known as the "best evidence rule" that in case a written document is available, no oral evidence can be led in that regard. In the present case, in the face of a document in writing, the pleas of the defendant cannot be permitted to be taken and are barred by the provision of Section 92 of the Evidence Act. In ***M/s. Kusum Enterprises and Ors. v. Vimal Kochhar and Anr.*** 207(2014)DLT172, it was observed as follows:

> "(c) Section 91 of the Indian Evidence Act, 1872 provides that where the terms of a contract have been reduced in the form of a document and where the matter is required by law to be reduced in the form of a document, no evidence shall be given in proof of the terms of such contract except the document itself; Section 92 of the Evidence Act provides that where the terms of the contract required by law to be reduced in the form of a document have been proved according to Section 91, no evidence of any oral agreement between the parties for the purpose of contradicting, varying, adding to, or subtracting from its terms shall be admitted; though there are exceptions to both the said provisions but the same have not been invoked by the respondents/plaintiffs or their counsel and the case is not found to be falling in any of the exceptions;”

24. The second allegation made by the respondent No.2 in his complaint of forgery is that by stating that the Special Power of Attorney which is executed by the petitioner No.2 in favour of petitioner No.1 (who is the mother) is dated 15th January, 2009 but

the stamp paper was purchased on 19th July, 2011 as per the investigation report. Petitioner No.2 has not stated that she has not executed the Special Power of Attorney in favour of her mother. She has not challenged the validity of the Special Power of Attorney. The allegations which are part of the complaint are also the subject matter of the suit. The execution of Special Power of Attorney has not been denied by the petitioner No.2. The civil suit is still pending. In case explanation 1 and 2 to Section 464 IPC are examined carefully for the purpose of alleged forgery committed by the petitioners and making a false document, it is clear that none of the explanations helps the submissions of the respondent No.2, as there is no allegation that the petitioner No.1 has forged her own signature or false document in the name of fictitious person is made. The petitioner No.2 is the daughter of petitioner No.1. She never denied her signature on the Special Power of Attorney. In the present case agreement was arrived at through broker Arun Tiwari who was known to the petitioners and other family members. He was involved with them for sale and purchase of other property. A Part of the land was sold through the same broker. For remaining part of the land, the said transaction was finalized. The amount was received by the petitioner No.1 in his presence. In fact his son Rajat Tiwari is one of the witnesses as appeared from the receipt issued by petitioner No.1. It is not possible that when huge amount was being paid by respondent No.2 through the broker they were not aware as to who is the owner of the property without examining papers of the suit property. Even otherwise petitioner No.1 as per receipt never claimed that she is the owner of the suit property.

25. Another important factor is that the complaint was filed in January, 2015 after the vacation of the interim injunction and dismissal of the application by the Civil Court. The balance consideration of Rs.2.52 crores deposited by the respondent No.2 in view of order dated 5th June, 2014 had been withdrawn by him after passing of order dated 26th November, 2014 by the Civil Court. The question of cheating under these circumstances does not arise as the petitioner No.1 did not do anything fraudulently with the intention to cheat the respondent No.2.

26. As far as the decisions referred on behalf of the respondent No.2 are concerned, it is clear that none of the decisions referred on behalf of the respondent No.2 are applicable to the facts of present case in hand.

i) In the case of **Mahesh Chaudhary v. State of Rajasthan & Anr.**, (2009) 4 SCC 439, the allegations in the complaint and findings of the Court were that public at large especially middle class and lower class people have invested their hard earned money and or money received at the time of their VRS or amount received from insurance companies after casualty of their legal heirs, are likely to be cheated by the inducement of "Rosy picture" shown by the company with respect to motor vehicle scheme.

ii) In the case of **State of Karnataka v. M. Devendrappa**, AIR 2002 SC 671, the FIR was not quashed mainly on the reasons that the allegations were to the effect that "Letter Heads" of Karnataka Bank Ltd., were removed surreptitiously and with fake seals, fake bank guarantees were typed out on the "Stamp Papers" purchased from

"Koratagere Stamp Vendor" and were signed by accused no. 2 posing to be the Manager of Karnataka Bank Ltd., Koratagere Branch. These bank guarantees were submitted as if they were genuine in the office of Deputy Commissioner of Excise, Tumkur. On 17th July, 1993, accused No. 1 took Excise Sub-Inspector to a house at Ashok Nagar, Tumkur where he introduced accused No. 2 to be the Manager of the Bank and caused service of a notice which was addressed to the Manager of the Bank by the Deputy Commissioner of Excise. Under the above circumstances, it was alleged that with fraudulent intention, fake bank guarantees, confirmation letters, extension letters were submitted and there was impersonation. Therefore, it was stated that offences were punishable as noted above.

iii) In the case of **M. Krishnan v. Vijay Singh & Anr.**, (2001) 8 SCC 645, it was the matter of fact that the accused persons filed a suit on false and flimsy claim by creating and forging documents/bonds/ papers, etc. Those documents were alleged to have been got filled up by the first accused which he had obtained from the complainant on blank papers for production before the Bank as guarantor. The accused were alleged to have betrayed the good faith and confidence reposed in them by the complainant and thus withdrew huge amounts on the basis of the forged documents. Along with the complaint the appellant filed a number of documents and got the statements recorded. After perusal of the complaint, the sworn statements of the complainant, his witness and inspecting the documents produced along with the complaint, the Trial Magistrate, vide his detailed order dated 3rd August, 1998 (Annexure P-7) directed the registration of the case against the accused No. 1 and 2 for offences punishable under Sections 193, 209, 406, 468 and 471 IPC read with Section 120B IPC and issued process against them.

iv) In the case of **Rajesh Bajaj v. State NCT of Delhi**, (1999) 3 SCC 259, the main allegation in the complaint was 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.

27. A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties is pending, the courts would not permit a person to be harassed. The case in hand does not fall in that category where cognizance of the offence could have been taken by the Court, at least after having gone through the FIR, which discloses only a civil dispute. The petitioner cannot be allowed to go through the rigmarole of a criminal prosecution for long number of years, even when admittedly a civil suit has already been filed against the petitioners by the respondent No.2/complainant, and is still sub-judice.

28. The matter in hand is wholly civil in nature. The criminal complaint has been filed to apply pressure on the accused in order to settle the civil dispute. The petitioner No.1 is 76 years old who is

mother of petitioner No.2 who has two children. Although, no hard and fast rule can be laid down, the present case is of breach of agreement, it is to be decided as to who is responsible for the same and consequences thereof as alleged in the suit which is a case of pure civil dispute. The offences against the petitioners would not attract the penal provisions contained in the Indian Penal Code either under Section 406 or Section 420 thereof.

29. For the aforesaid reasons and law applicable to the facts of the present case, the FIR No.109/2015, Police Station Vasant Kunj (South), under Sections 406/420/34 IPC registered on 29th January, 2015 and all subsequent proceedings emanating therefrom are liable to be quashed. Ordered accordingly.

30. The observation made in this matter shall have no bearing on the civil litigation pending between the parties which shall be decided without any influence of this order.

31. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 07, 2016