IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2211 OF 2017

1.	Shri. Deven Jitendra Mehta aged about 46 years, Occ. Business residing at D3/D4, Amlafi Building, Hanging Garden, L. D. Ruparel Marg, Malbar Hill, Mumbai – 400006	]]]]]	..Petitioner.

Versus

1.	State of Maharashtra Through Azad Maidan Police Station.	]]]	
2.	Sumit N. Daga Aged 30 years, Occupation : Jewellery trading, Residing at Ramlal Mannilal Daga Ramdevji ka mandur, Sardar Shahr Churu Raj, Rajasthan	]]]]]]	..Respondents.

Mr. P. K. Dhakephalkar, Senior Advocate with Mr. Pranav Badheka i/b Ms. Gunjan Mangla for the Petitioner.
Mrs. A. S. Pai, APP for the State.
Mr. Shirish Gupte, Senior Advocate with Karansingh Rajput i/b Jay Kishore Bhatia for Respondent No. 2.

Coram : Ranjit More & A. S. Gadkari, JJ.
Date on which Arguments were heard : **August 2, 2017**.
Date on which Judgment pronounced : **August 14, 2017**.

Judgment [Per Ranjit More, J.] :

1. Heard Mr. Dhakephalkar, the learned Senior Counsel for the Petitioner, Mr. Gupte, the learned Senior Counsel for Respondent No. 2, and the learned APP for the State.

2. The petition is filed invoking the jurisdiction of this Court

under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 to quash and set aside the proceedings of criminal case bearing No. 846/PW/2016 pending on the file of Additional Chief Metropolitan Magistrate, 64th Court, Esplanade, Mumbai. The said case arises out of registration of FIR bearing CR No. 127 of 2014 with Azad Maidan Police Station at the instance of Respondent No. 2 for the offence punishable under sections 420, 465, 467, 468 and 471 read with 34 of the Indian Penal Code, 1860.

3. Initially, the said FIR was registered against Hiren Maheshkumar Soni, notary S.M.N. Naqvi and advocate P.S.Deb. The allegations made in the FIR as are follows :

That Respondent No.2 (complainant), a resident of Rajasthan, residing alone at Dubai since 2009. Respondent No. 2 owns companies SCG Jewellers LLC in Dubai and he is doing jewellery business through these companies. That flat No. 7904 and car parking situated in Torch Tower, Marina in Marsa city, Dubai [for short "the said flat"] is standing in the name of Complainant. The Complainant wanted to give this flat on rent and therefore approached estate agent SPF Reality, estate broker. At that time, he was told that the said flat was already sold to Epsilon Limited. On this information, the

Complainant made further enquiry and came to know that the said flat is sold by Hiren Maheshkumar Soni to Epsilon Limited. He also came to know that the said flat is sold by using his forged power of attorney dated 15th July 2013. The FIR further alleges that the said power of attorney is notarised by notary S.M.N.Naqvi and one Mr. P.S.Deo, advocate has signed as a witness. It is also alleged that when such power of attorney was prepared in Mumbai, the Complainant was at Dubai. In short, it is the case of Complainant that above-said three persons on the basis of said forged power of attorney sold the said flat to Epsilon Limited and thereby cheated the Complainant.

4. The case of the Petitioner is as follows :

That the Petitioner is doing business of share trading. He was also doing business in Dubai and therefore contemplated purchasing a residential property in Dubai. Accordingly, he informed his friends, acquaintances about his intention to purchase a property in Dubai. Pursuant to the same, the Petitioner received a brochure from Abdul Wahab of SPF Reality. The Petitioner was also told by the property agent that 30% of the price of the flat will have to be made by him and the remaining 70% will have to be taken loan from bank in Dubai. The Petitioner thereafter approached various banks, namely, Standard Chartered Bank, HSBC Bank and Marine Bank for availing the loan. He was informed by the said banks that home loan is given only to individuals either working in Dubai for more than 6 months or having permanent residency in Dubai.

. The Petitioner thereafter enquired with his acquaintance Mr. Sumeetchand Gavthi, who was doing jewellery business in Dubai. Mr. Gavthi informed the Petitioner that the Complainant was working for ACC Jewellers LLC in Dubai. Through Mr. Gavthi the Petitioner came in contact with the Complainant. Thereafter they had a detailed discussion and the Complainant agreed to availing the loan in his name and getting property registered in his name. That though the property stood in the name of Complainant, the monies were paid by the Petitioner as per the mutual understanding between himself and the Complainant.

. That Abdul Wahab (of SPF Realty) and Mr. Jonathan (of Select Property) were aware that the said flat was purchased by the Petitioner and for convenience for availing bank loan, it stood in the name of Complainant. That there are various emails and other correspondence available with him which will demonstrate his case as stated above.

. That due to financial crunch, the Petitioner was constrained to sell the said flat and the Complainant was consistently delaying the same on one or the other pretext, the Petitioner requested the Complainant to execute a power of attorney in favour of Mr. Hiren Soni, who was an employee of Yogesh Shah, family friend of the Petitioner. The Complainant accordingly executed power of attorney in favour of Hiren Soni, which was notarised by notary Mr. Naqvi and witnessed by advocate Deb and on the basis of this power of attorney, the said flat was sold to Epsillon Limited.

5. Mr. Dhakephalkar, the learned Senior Counsel for the Petitioner took us through the charge-sheet and various documents annexed thereto and submitted that the same discloses that the said flat was purchased by the Petitioner but for convenience, namely, for obtaining loan, flat was shown in the name of Complainant. Learned counsel asserted that the Petitioner is owner and disputed 2^{nd} respondent's ownership to the said flat. He submitted that since the Petitioner is owner of the said flat, no offence can be said to have been committed by him as alleged in the FIR. At any rate, Mr. Dhakephalkar submitted that the dispute raised in the complaint is of civil nature and therefore the proceedings of the subject criminal case deserve to be quashed and set aside.

. Learned counsel then invited our attention to the Complainant's signature on the disputed power of attorney and his admitted signature on the passport and submitted that the verification of the same would show that the signatures are of the one and the same person. In this regard he also invited our attention to the order passed by the learned Single Judge of this Court in bail application filed by Hiren Soni.

Mr. Dhakephalkar submitted that original power of attorney is not produced before the investigating agency. He submitted that in the absence of the same, the offence of forgery cannot be alleged.

. Mr. Dhakephalkar also submitted that what is important is that though voluminous correspondence is placed on record showing the Petitioner's interest in the said flat, the FIR is absolutely silent regarding the Petitioner's role. The FIR deliberately suppressed the fact that the Petitioner is owner of the said flat.

6. Mr. Gupte, the learned Senior Counsel for Respondent No.2 opposed the petition very vehemently. At the outset, he submitted that after completion of investigation into the subject FIR, since charge-sheet is filed in the Court, the Petitioner has alternative and efficacious remedy to file discharge application before the trial Court and therefore this Court in exercise of powers under Article 226 of the Constitution of India and section 482 of the Code of Criminal

Procedure, 1973 should not interfere with the writ petition. He submitted that on the date on which power of attorney was notarised, the Complainant was not in India and he was in Dubai and as such clear cut case of forgery is made out. He submitted that during investigation, it was found that the Petitioner has used Mr. Hiren Soni to sell the said flat belonging to the Complainant and since Hiren Soni as well as notary Mr. Naqvi and advocate Deb did not get any advantage, they were made witnesses and the charge-sheet is filed only against the Petitioner. He submitted that this is not the stage to form an opinion about the genuineness or otherwise of the signatures of the Complainant on the disputed power of attorney.

7. The learned APP for the State adopted the arguments advanced by Mr. Gupte and submitted that petition is devoid of any merit the same be dismissed.

8. We have gone through the petition, copy of the charge-sheet with its enclosures and affidavit-in-reply filed by Respondent No. 2, i.e., original complainant.

9. At the outset and before entering into merits of the claims of the respective parties, we would like to deal with the preliminary objection of Mr. Gupte regarding the maintainability of the petition on the ground of alternative remedy. Mr. Gupte in this regard

relied upon the decision of the Apex Court in *Vinod Raghuvanshi v. Ajay Arora [(2013) 10 SCC 581]*. In this case, the Apex Court examined the scope of powers of the High Court under section 482 of the Code of Criminal Procedure, 1973. The Apex Court laid down principles to be kept in mind by the High Court while exercising such powers. The Apex Court held that if *prima facie* case to proceed against the accused exists, then, the complaint cannot be quashed. In this case, Respondent No.1 initially filed criminal complaint against 9 partners alleging against them that they had replaced deed of partnership dated 5th March 2002 in the bank and forged partnership deed dated 6th March 2003 was implanted in Excise Office in its place to deprive him of the profits of the firm. The Chief Judicial Magistrate after recording the statement of the Respondent and after considering the pre-charge evidence, registered case against the Appellant and two others for the offence punishable under section 420 and 120B of IPC. Appellant thereafter filed application under section 482 of the Code. The High Court dismissed such application and thereafter Appellant approached the Apex Court. The Apex Court on being satisfied that some material is available on record to proceed against the Appellant and others, dismissed the appeal. This decision shows that the Apex Court entered into merits of the matter and having found that there is material against the Appellant dismissed the appeal. This decision, therefore, is not on the point of maintainability of the petition under section 482 of the Code of Criminal Procedure, 1973.

10. Mr. Dhakephalkar, the learned Senior Counsel in support of maintainability of the petition relied upon the decision of the Apex Court in *Umesh Kumar vs. State of Andhra Pradesh [(2013) 10 SCC 591]*. In this decision, the Apex Court examined the scope of powers of the High Court under section 482 of the Code of Criminal Procedure, 1973. The observations of the Apex Court in paragraph 20 are relevant for our purpose, which read thus :

> "The scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Cr.P.C.; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed alongwith the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can

> argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial.

. Perusal of the above observations makes it abundantly clear that High Court can entertain petition under section 482 of the Code for quashing the charge-sheet even before charges are framed or the application for discharge is filed. This decision is squarely applicable to the case in hand. We accordingly hold that the petition is maintainable.

. Having upheld the maintainability of petition, we would like to consider the case of the respective parties on merit. At the same time, we make it clear that we are conscious of the fact that High Court in exercise of powers under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 may interfere with the criminal proceedings to prevent abuse of the process of the Court or otherwise to secure the ends of justice, however, those powers should be exercised sparingly and that too in rare cases.

11. It is the bold stand of the Petitioner that he is the owner of the said flat and the Complainant's name was shown in the record for convenience. The Complainant on the contrary alleges that the

said flat belongs to him and the said flat was sold by Mr. Hiren Soni with the help of bogus power of attorney. The FIR does not at all refer the name of the Petitioner. In the light of above stands taken by the respective parties, let us examine the documents annexed to the charge-sheet and heavily relied upon by the Petitioner.

. Document at page 209 of charge-sheet is Agency Fees Agreement dated 24th May 2012. This agreement is executed between the Petitioner and SPF Realty Real Estate Broker LLC relating to apartment No. 7903, a 3 bedroom Pent House in Torch Tower developed by Select Property Group. By this agreement, the purcahser has confirmed that upon successful transfer of the property in the name of the buyer for AED 4,740,000/-, the purchaser will pay an amount of AED 84,800/- to SPF Realty Real Estate Broker LLC being the agency fees for the subject mentioned property.

. On 25th July 2012 another document executed between the Petitioner and SPF Realty Real Estate Broker LLC in respect of Unit No. 7904, a 3 bedroom Duplex Pent House measuring 4032 square feet in Torch tower, located in Dubai Marina developed by Select Property. Under this agreement, purchaser confirmed that upon successful transfer of property in the name of buyer for AED 5,200,000, the purchaser will pay an amount of AED 94,000/-, being the agency fees to SPF Realty Real Estate Brokers LLC, copy of which is annexed at page No. 210.

. Document at page No. 238 is copy of the email dated 26th May 2012 from Abdul Wahab of SPF Realty to the Petitioner regarding Torch Pent House Pictures. The Petitioner was informed by this email that as requested by him, Abdul Wahab is sending pictures of the pent house along with this email.

At page No. 260, there are copies of three emails. The first email is dated 30th May 2012 by Abdul Wahab to the Petitioner regading the deposit of Unit No. 7903. By this email, the Petitioner was informed that deposit cheque is to be payable to Select Developments Limited. The Petitioner was also asked when cheque would be ready and from where the same would have to be collected. On 2nd June 2012 there is another email from Abdul Wahab of SPF Realty to the Petitioner regarding collection of the deposit cheque. On the very same day, the Petitioner sent an email to Abdul Wahab and told him that he could collect the cheque of 3,00,000 dirhams from Anil Bhasin.

On page No. 261 there is copy of the email from Simon Quinton of Select Property to the Petitioner. Copy of this email is also marked to Abdul Wahab of SPF Realty. In this email Mr. Simon

Quinton has stated that Abdul Wahab has given cheque and copy of the same as well as acknowledgement receipt was annexed to the email. The understanding was expressed by said Simon Quinton that the balance of the reservation deposit will be sent shortly.

Page No. 264 is copy of the email dated 3rd June 2012 from Simon Quinton to the Petitioner, copy of which was also marked to Abdul Wahab. Along with this email, Simon Quinton had sent official receipt from Select Group for initial deposit of 3,00,000 AED for Torch 7903.

At page No. 266 are the copies of emails exchanged between Kalpesh Sampat and the Petitioner regarding details required for getting visa for resident status of Dubai and to get lower interest rate.

At page 267 is the email dated 21st June 2012 sent by Simon Quinton to the Petitioner. By this email, Simon Quinton has sent initial reservation contracts to the Petitioner which are signed by Select Property. Page No. 270 is the copy of the email dated 27th June 2012 sent by Simon Quinton to Abdul Wahab and copy of which is marked to the Petitioner. By this email, Simon Quinton has informed that the Sales Purchase Agreement is ready and is in his office ready for when the Petitioner is available. Page No. 268 is the copy of the

Reservation agreement between the Petitioner and Select Property.

At page 271 is the copy of the email dated 4^{th} July 2012 sent by Abdul Wahab to the Petitioner requesting him to come to Dubai as seeller is asking when is he comoing to Dubai for transfer. By this emial, Abdul Wahab has also informed the Petitioner that all the furniture is shifted to his apartment by Select Property and they are waiting for the Petitioner to come and finalise the interior work.

. At page 272 is the copy of the email from the Petitioner to Simon Quinton stating that he will be in Dubai on 25^{th} July 2012 only to close the issue of sale. By his another email dated 24^{th} July 2012 copy of which is at page 274, Simon Quinton has sent to the Petitioner statement of account for the unit. On page No. 275 there is statement of accounts which shows that the Petitioner has paid an amount of AED 5,20,000/-.

By the email dated 31^{st} July 2012 copy of which is at page 276, Abdul Wahab has written to Jonathan Vaughan of Select Property that the Petitioner is buying this property for himself and he need to do some interior work in the apartment, to make the drawings contractor needs some drawings and layouts of the apartment and has requested to send the same.

On page No. 278, there are copies of three emails.

Firstly, on 5th August 2012 Abdul Wahab has written to the Petitioner to update for the cheques as Jonathan is expecting the cheque. To this, the Petitioner replied on the same day stating that he will sms him the address and place for picking up the cheque that day itself. In response, Abdul Wahab writes back to the Petitioner informng him that he would be out of office whole day and therefore requested to sms the name and no from where he has to pick up the cheque. In pursuant of this email, cheque for an amount of AED 2,20,000/- was given to the Select Property towards the price of the said flat, copy of which is annexed at page No. 279.

On page No. 280 there are copies of emails exchanged between the Petitioner and Jonathan Vaughan of Select Property. On 12th August 2012 the Petitioner has written to Jonathan that he is very shocked and surprised at delays as he has appointed an interior designer whose retainer is on. To this, Jonathan writes back to the Petitioner on the same day tendering apologies for the time it has taken to obtain these files.

On page No. 283 is the copy of the email from Abdul Wahab to the Petitioner dated 2nd September 2012 informing him about various documents required by Tamweel for the finance. By the email dated 6th September 2012 Abdul Wahab informed the Petitioner that he has received some documents and waiting for documents from Mr. Gavthi. Abdul also asked the Petitioner to send AED 10,000/- as early as possible because he has to give AED 1,000/- to each bank along with these documents.

On page No. 284 is the copy of the email by Abdul Wahab to the Petitioner dated 8th September 2012 informing the Petitioner that he will be out all day and requesting to sms the no of the person from where he has to collect the payment of AED 10,000/-. He further requested the Petitioner to try to send the payment that day itself so he can give his and Mr. Gavthi's documents to all the banks.

On page No. 285 is the copy of the email written by Amrat, the interior designer to the Petitioner dated 13th September 2012. By this email, Amrat expressed desire that the Petitioner should also arrange for 50% of his fees, which would be Dhs.30,000.

On page No. 286 is the copy of the email dated 17th September 2012 sent by Jonathan Vaughan of Select Property to the Petitioner, copy of which is marked to Abdul Wahab and Simon Quinton. Along with this email Jonathan sent a 7 day termination notice for the reservation of unit No. 7904. Copy of the termination notice addressed to the Petitioner for reservation of the said flat is annexed at page No. 287. Notice categorically calls upon the Petitioner for further payment of AED 46,80,000/- as per the terms of the reservation agreement.

On page No. 288, is the copy of the email dated 25th September 2012 sent by Jonathan Vaughan of Select Property to the Petitioner, copy of which was marked to Abdul Wahab and Simon Quinton. By this email, Jonathan informed the Petitioner that extension has been granted to the termination notice period and that the Petitioner has been given time until close of business on 27th September.

On page No. 290 is the copy of the email dated 27th September 2012 send by Jonathan Vaughan to the Petitioner, copy of which is marked to Abdul Wahab. By this email, Jonathan informed the Petitioner that maximum approved finance to value ratio is 60% and therefore the Petitioner has to pay cheques totalling AED 1,681,918/- before the close of business day. Jonathan further informed the Petitioner that in addition, they also require the new reservation form signed by Sumit Daga, the new purchaser.

On page No. 291 is the copy of the email dated 27th September 2012 sent by Amrat (Interior designer) to the Petitioner. By the said email, Amrat gave detailed break up of the money given to her for the interior work of the apartment.

On page No. 293 is the email dated 30th September 2012 send by Abdul Wahab to Jonathan Vaughan, copy of which is marked to the Petitioner. By this email, Abdul Wahab askede Jonathan Vaughan to email him the signed new reservation form of 7904 as early as possible as he need it to forward it to Tamweel (Financer). In this new form name of the purchaser is shown as Sumit Daga and seller is Select Property.

On page No. 298 is the email from Jonathan asking the Petitioner whether he has planned to increase the LTV for 60-70%. In response, the Petitioner emailed that the bank has agreed to do so.

On page No. 299 is the copy of the email dated 2nd October 2012 sent by Simon Quinton to the Petitioner, copy of which is marked to Jonathan and Abdul Wahab. By this email, Simon informed the Petitioner that Abdul delivered the cheque to him that afternoon and requested the Petitioner to provide the telephone number and email contact of Sumit Daga.

On page No. 301 is the copy of the email dated 4th October 2012 send by Simon Quinton to Abdul Wahab, copy of which is marked to the Petitioner, asking Sumit Daga's telephone Nos. and email address for the reservation form. Also informed Abdul Wahab that Sumit has to sign again the document, i.e., reservation form, as the amount was incorrectly mentioned in the earlier form.

On page No. 302 is the email dated 11th October 2012 written by Abdul Wahab to the Petitioner requsting him to ask Sumit to provide all those documents as early as possible.

On page No. 303 is the email dated 11th October 2012 from Simon Quinton to Abdul Wahab, copy of which is marked to the Petitioner. With this email, Simon sent statement of accounts as requested. Extract of statement of accounts is at page No. 304. The amount of AED 5,20,000/- earlier paid under two cheques by the Petitioner is accounted in this statement of account of Sumit Daga.

On page No. 313 is the email dated 14th October 2012 from Jonathan Vaughan to Kazim Mustafa of Tamweel, copy of which is marked to the Petitioner. In this email, Jonthan states that they have been told to hold the final 10% cheque as the LTV would be increased from 60-70% of the property purchase price and asking for updated official letter.

On page No. 315 is the email dated 24th October 2012 sent by Abdul Wahab to the Petitioner informing that Sumit Daga was sent to Tamweel a day before but he did not bring the required documents along with him. Abdul Wahab requsted the Petitioner to speak to him and ask him to submit all the documents mentioned in the email. Further on the same page, is the email dated 28th October 2012 sent by Abdul Wahab to the Petitioner. In the said emial, Abdul Wahab expressed that balance amount of 10% would be paid by next day morning. He further requested the Petitioner to kindly call Sumit and make sure that he submits all the documents mentioned in the emial with cheques to Tamweel.

. On page No. 321 is the email from Jonathan Vaughan to the Petitioner dated 8th November 2012 stating that he has to pay late payment charges of AED 50,475.89 charged by Select Group due to delay in the transaction and also asking the Petitioner to request Mr. Sumit Daga to sign and return the letter of indemnity.

On page No. 327 is the email dated 10th November 2012 from Jonathan Vaughan to the Petitioner, copy of which is marked to Abdul Wahab and Simon Quinton. By this email, Jonathan informed the Petitioner that he has not received a reply regarding the letter of indemnity for the late payment penalty. At page No. 328 is the indemnity letter given by Sumit Daga.

On page No. 329 is the email dated 13th November 2012 from Jonathan Vaughan to the Petitioner asking him whether he has moved into his apartment and whether he is happy with his purchase. Jonathan also says in his email that the Petitioner should enjoy a good family vacation in his new house.

On page Nos. 330 to 333 are the trail of emails from Abdul Wahab and Kalpesh Sampat dated 6th January 2013 to 27th February 2013 addressed to the Petitioner requesting for payment of their commission of AED 94,000 against the sale of Unit 7904 Torch Tower Dubai. Mr. Abdul also mentions in his email that the Petitioner had to pay the late payment fee to Select Properties because the Petitioner had changed his apartment and the buyer's name.

12. The above referred correspondence through email exchanged between the Petitioner, Abdul Wahab of SPF Reality, Simon Quinton, Jonathan Vaughan of Select Property, Amrat (interior designer) and Tamweel (Financer) makes following things clear :

That the Petitioner wanted to purchase a flat in Dubai, therefore he made enquiries with SPF Reality, Estate Broker. That the Petitioner initially agreed to purchase unit No. 7903 of Torch Tower of Select Properties for the consideration of AED 42,00,000/-. That the Petitioner agreed to pay to SPF Reality an amount equivalent to 2% of the purchase price towards their

commission, totalling to AED 94,000/-. That towards 10% of the purchase price, the Petitioner deposited an amount of AED 5,20,000/- with Select Property by two cheques of AED 3,00,000/- and AED 2,20,000/-. That the Petitioner was told that he has to take loan for 60% of the purchase price and thereafter he made enquires with various banks. However banks showed their willingness to extend loan facility to a person who is resident of Dubai or who is working in Dubai for six months. That, through Mr. Gavthi (the Petitioner's friend), the Complainant was chosen to avail loan facility and to register the said flat in his name. Fresh reservation agreement was executed by Select Property in the name of Sumit Daga. The earlier amount of AED 5,20,000/- paid by the Petitioner was shown in the statement of account of the Complainant Sumit Daga. There was delay in arranging the balance of purchase price including the loan amount. Hence, Select Property gave termination notice. However, time of termination notice was subsequently extended. Since there was delay in payment of the consideration amount, the Petitioner was asked to give indemnity for late payment and the Petitioner was asked to get signatures of Sumit Daga. That, loan documents in respect of Sumit Daga was asked from the Petitioner. The

Petitioner was put in possession of the said flat and the Petitioner spent vacation in the said flat.

13 From the above, we find great substance in the Petitioner's contention that he is owner of the said flat and for convenience, namely for obtaining the loan, the same stood in the name of Complainant – Sumit Daga. Had Sumit Daga been owner of the said flat, there would not have been correspondence in the name of the Petitioner by Abdul Wahab, Tamweel, Jonathan Vaughan and Simon Quinton or Amrat (Interior Designer) and the Petitioner would not have deposited the part of consideration money.

14. At this stage it is also interesting to note that even the investigating agency came to the conclusion that the Petitioner is owner of the said flat and same was purchased in the name of Complainant – Sumit Daga through his employer – Mr. Gavthi, who happens to be friend of the Petitioner. This conclusion is recorded in paragraph 9 of the charge-sheet and the same is arrived at on the basis of email correspondence for the period between 2nd June 2012 to 14th March 2014 exchanged between the Petitioner, Abdul Wahab, Simon Quinton and Jonathan Vaughan. However, charge-sheet is filed as the earnest amount towards the purchase of the said flat was

deposited through the bank accounts of Complainant – Sumit Daga.

15. The police machinery and the investigating officers under the Code of Criminal Procedure, 1973 enjoy wide powers for the purposes of investigation. However, with wide powers, comes higher responsibility and the police officers investigating into a crime are expected to act in impartial, fair and efficient manner. The investigation into an offence is not a mechanical process. The Investigating Officer has to apply his mind at every stage of the investigation and is expected to make an effort to find out the truth. The investigation does not mean merely recording of statements and carrying out different panchnamas, but there has to be a definite direction in which the investigation should proceed. The investigating agency has to explore all the facets of the case. If the accused has any circumstances in his favour, the Investigating Officer is not only expected to find out the veracity of the version given by the accused, but it is his duty to investigate the case from all angles. That does not mean that the Investigating Officer has to accept blindly whatever is stated either by the accused or even by the witnesses. The Investigating Officer has to form his own opinion before filing report under section 173 of the Code of Criminal Procedure, 1973. In our

opinion, having come to the conclusion that the Petitioner is the owner of the said flat, investigating agency was not justified in filing charge-sheet against the Petitioner for the offence of cheating and forgery inasmuch as essence of the offence of cheating and forgery is dishonest and fraudulent intention as defined under IPC and if the Petitioner is owner of the said flat he cannot be said to have done things dishonestly or fraudulently.

16. In any case, on the basis of charge-sheet, we find that the Petitioner is not surely the stranger to the said flat. Non disclosure of the Petitioner's name in the FIR also speaks volume. To say the least, the facts as unfolded in the charge-sheet and the correspondence through email unequivocally shows that the Petitioner has interest in the said flat. Even for the sake of argument it is accepted that the Complainant has contributed some amount towards the purchase price ignoring the contention of the Petitioner that the said amount is paid by him through Sumit Daga, in that case also, the dispute raised in the FIR is of civil nature. By now it is settled position in law that if the dispute has flavour of civil nature, the same cannot be agitated in the form of criminal proceedings. Reference can be made to the decision of the Apex Court in *Thermax Limited vs K. M. Johny [(2011) 13 SCC 412]* and *Devendra v. State of UP [(2009) SCC 495]*

17. Be that as it may in the light of the Petitioner's stand that the disputed power of attorney is signed by the Complainant himself, we compared the Complainant's signature on the said power of attorney with the Complainant's admitted signature on the passport. Copy of the power attorney is annexed at page No. 536. The Complainant is shown to have signed as executor of the power of attorney. The same is notarised by Notary Naqvi and witnessed by Advocate Deb. Document at page No. 349 is the Complainant's passport bearing his signature. Having compared the Complainant's signature on the said power of attorney and his signature on the passport, we find the same are by one and the same person. At this stage, it is also relevant to mention that similar prima facie findings are recorded by the learned Single Judge of this Court in her order dated 9th October 2014 passed in Criminal Bail Application No. 2119 of 2014 filed by Hiren Soni, copy of which is annexed at page 22 of the petition.

18. This takes us to consider the submission of Mr. Dhakephalkar that in the absence of original power of attorney, the offence of cheating or forgery cannot be made out. The charge-sheet reveals that the Complainant filed FIR after obtaining xerox copy of the

disputed power of attorney from Dubai Land Department. The said xerox copy of the power of attorney is placed on record. The record further reveals that the investigating agency has sent the Complainant's signature on this disputed document for examination and comparison with his admitted signatures to Additional Chief State Examiner of Documents, CID, Maharashtra State, Mumbai. However, by its letter dated 29th July 2016, the said Examiner of Documents has requested the Joint Commissioner of Police, Crime to obtain original of the disputed document for verification. Thus, it is clear that the opinion about the genuineness or otherwise of the disputed power of attorney could not be given for want of availability of the original. The prosecution case itself shows that the original power of attorney is submitted to Dubai Land Department at the time of transfer of the said flat. Thus, we find that in the absence of expert opinion for want of original, the fate of the criminal trial in the present case is apparent.

19. Taking totality and peculiarity of the facts and circumstances of the present case into consideration, we find that there is substance in the Petitioner's case, that he is owner of the said flat and in any case, the Petitioner cannot be said to be stranger to the said flat. At the same time, we also find that the Complainant has

suppressed many of the material and relevant facts and dispute raised in the FIR is of civil nature. In the circumstances, the continuation of the criminal proceedings against the Petitioner will be abuse of the process of law. We accordingly quash and set aside the proceedings of criminal case bearing No. 846/PW/2016 pending on the file of Additional Chief Metropolitan Magistrate, 64th Court, Esplanade, Mumbai. Petition is accordingly allowed in aforesaid terms.

[A. S. GADKARI, J.] **[RANJIT MORE, J.]**