IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4396 OF 2018
(The judgment is corrected in pursuance of the order dated 14th December, 2018.)

Anant Pandurang Kale Residing at Kalewadi, Charholi Budruk, Taluka – Haveli, District – Pune	))))	....Petitioner
versus		
1. The Union of India Through Secretary Home Ministry of Home Affairs, New Delhi 2. Central Bureau of Investigation Anti Corruption Bureau, Pune having its office at GPOA, Kendriya Sadan, A and B Wing, Akurdi, Pune – 411044. 3. State of Maharashtra, Through the Chief Secretary, Mantralaya, Mumbai.	)))))))))))	....Respondents

with
WRIT PETITION NO.4572 OF 2018

Ashwini Kshirsagar Residing at 1317, Kasba Peth, Surbhi Prestage near Surya Hospital Pune 411 011.	))))	....Petitioner
versus		
1. Central Bureau of Investigation having its office at GPOA, Kendriya Sadan, A Wing, Akurdi, Pune – 411044. 2. State of Maharashtra, Through office of Public Prosecutor, High Court, Appellate Side, Mumbai.	))))))))	....Respondents

with
WRIT PETITION NO.4627 OF 2018

1. Naveen Kumar Rai residing at 40 and 41,	))	

Laxmi Terraces, Karve Nagar,	)	
Pune.	)	
2. Siraj Razzak Bagwan	)	
Residing at Flat No.S 04,	)	
D Wing, Pride Platinum Society	)	
Baner, Near Pan Card Club, Pune.	)	....Petitioners
versus		
1. The Union of India	)	
Through Secretary Home Ministry	)	
of Home Affairs, New Delhi	)	
2. Central Bureau of Investigation	)	
Anti Corruption Bureau, Pune	)	
having its office at GPOA,	)	
Kendriya Sadan, A and B Wing,	)	
Akurdi, Pune – 411044.	)	
3. State of Maharashtra,	)	
Through the Chief Secretary,	)	
Mantralaya, Mumbai.	)	....Respondents

with

WRIT PETITION NO.4641 OF 2018

Pankaj Pandurang Dhawale	)	
At- Garur Colony, Kamshet	)	
Taluka-Maval, Dist.-Pune	)	....Petitioner
versus		
1. The Union of India	)	
Through Secretary Home Ministry	)	
of Home Affairs, New Delhi	)	
2. Central Bureau of Investigation	)	
Anti Corruption Bureau, Pune	)	
having its office at GPOA,	)	
Kendriya Sadan, A and B Wing,	)	
Akurdi, Pune – 411044.	)	
3. State of Maharashtra,	)	
Through the Chief Secretary,	)	
Mantralaya, Mumbai.	)	....Respondents

with

WRIT PETITION NO.4642 OF 2018

Atul Gulabrao Bhegde	)	
At-PO Talegaon Dabhade,	)	
Taluka – Maval, Dist.-Pune	)	....Petitioner
versus		
1. The Union of India	)	

Through Secretary Home Ministry of Home Affairs, New Delhi	)	
2. Central Bureau of Investigation Anti Corruption Bureau, Pune having its office at GPOA, Kendriya Sadan, A and B Wing, Akurdi, Pune – 411044.	)	
3. State of Maharashtra, Through the Chief Secretary, Mantralaya, Mumbai.	)	....Respondents

with

WRIT PETITION NO.4643 OF 2018

Vishnu Manku Bomble At- PO, Kamshet, Village Pimploli, Taluka-Maval, Dist.-Pune	)	....Petitioner
versus		
1. The Union of India Through Secretary Home Ministry of Home Affairs, New Delhi	)	
2. Central Bureau of Investigation Anti Corruption Bureau, Pune having its office at GPOA, Kendriya Sadan, A and B Wing, Akurdi, Pune – 411044.	)	
3. State of Maharashtra, Through the Chief Secretary, Mantralaya, Mumbai.	)	....Respondents

with

WRIT PETITION NO.4644 OF 2018

Shantaram Kondiba Dahibhate At- Bedse, PO Kamshet, Taluka-Maval, Dist.-Pune	)	....Petitioner
versus		
1. The Union of India Through Secretary Home Ministry of Home Affairs, New Delhi	)	
2. Central Bureau of Investigation Anti Corruption Bureau, Pune having its office at GPOA, Kendriya Sadan, A and B Wing, Akurdi, Pune – 411044.	)	
3. State of Maharashtra,	)	

Through the Chief Secretary,)
Mantralaya, Mumbai.) ....Respondents

with
WRIT PETITION NO.4645 OF 2018

Ashok Kisan Konde)
At- PO Takwe Badruk,)
Taluka-Maval, Dist.-Pune) ....Petitioner
versus
1. The Union of India)
Through Secretary Home Ministry)
of Home Affairs, New Delhi)
2. Central Bureau of Investigation)
Anti Corruption Bureau, Pune)
having its office at GPOA,)
Kendriya Sadan, A and B Wing,)
Akurdi, Pune – 411044.)
3. State of Maharashtra,)
Through the Chief Secretary,)
Mantralaya, Mumbai.) ....Respondents

Dr. Sujay Kantawala along with Ms. Aishwarya Kantawala, Ms. Poorva Patil and Ms. Neha Suresh Ahuja, advocate for the petitioner in writ petition No.4396 of 2018.
Mr. Vikram Nankani, senior advocate along with Mr.H.K.Sudharaka i/b Mr. Sebin Michael Joseph, advocate for the petitioners in writ petition Nos.4627, 4641, 4642, 4642, 4644, 4645 of 2018.
Ms.Chandana Salgaocar, advocate for the petitioner in writ petition No.4572 of 2018.
Mr. Hiten S. Venegaonkar, advocate for the CBI.
Ms. Prajakta P. Shinde, APP for the State.
Mrs. Aruna S. Pai, APP for the State in writ petition No.4572 of 2018.

CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.

DATE OF RESERVING : 1st NOVEMBER, 2018.

DATE OF PRONOUNCEMENT : 5th DECEMBER, 2018.

JUDGMENT : (Per : Ranjit More. J.)

Rule. Rule is made returnable forthwith and by consent, the matters are heard finally.

2. The petitioners in all the above petitions have approached this Court invoking jurisdiction under Article 226 of the Constitution of India read with the provisions of Section 482 of the Code of Criminal Procedure, 1973 for quashing and setting-aside the charge-sheet/criminal proceedings of special case No.52 of 2017 pending on the file of learned Special Judge, CBI, Pune for the offences punishable under Sections 120-B, 420 read with 511 of the Indian Penal Code, 1860(for short "the IPC") and Sections 13(2) and 15 read with 13(1)(d) of Prevention of Corruption Act, 1988 (for short "the PC Act").

3. The above referred charge-sheet is filed against 18 accused. The accused Nos. 1 to 4 are the purchasers, accused No.5 is an advocate, accused No.6 is the proprietor, accused Nos. 7 and 8 are the Sub-Registrars and accused Nos. 9 to 18 are the power of attorney holders of the sellers.

4. The case of the prosecution is that during the period between 2007 and 2009, the accused No.1(Shri Deepak Dattatray Gadgil)-the authorized signatory of accused No.2(Shri Virendra Dattatray Mhaiskar)-Managing Director of accused No.3 (M/s.Aryan Infrastructure Investments Pvt.Ltd.) and accused No.4 (M/s.IRB Infrastructure Developers Ltd.) along with

accused No.5(Advocate- Ajit Kulkarni); and accused No.6(wife of accused No.5 – Smt. Jyoti Kulkarni-Prop. Of M/s. Jyo Development Corporation); along with accused No.7(Ashwini Kshirsagar, petitioner in writ petition No.4572 of 2018), the then Sub-Registrar of Lonavala, Pune and accused No.8 (Anant Pandurang Kale, petitioner in writ petition No.4396 of 2018), the then Sub-Registrar of Maval, Pune, and accused Nos. 9 to 18, the power of attorney holders entered into criminal conspiracy with each other and, dishonestly and fraudulently attempted to cheat the Government of Maharashtra by way of grabbing the lands in Village – Pimploli, District- Pune.

5. The following facts emerge from the record produced before the Court.

In the year 1995 to 1999, the Public Works Department (PDW), on behalf of Maharashtra State Road Development Corporation (MSRDC) had acquired several parcels of lands in village – Pimploli for the purpose of Mumbai Pune Expressway. In the year 2000, MSRDC completed the construction of the Expressway and, in the year 2002, it was made fully functional. So far as the lands in question are concerned, in the year 2003, the concerned Talathi record mutation entry Nos.638, 639, 640 and 641 as per Kami Jasta Patras (statement showing reduction or increase in the acquired land) sent by the Land Acquisition Officer stating that the acquired lands and the name of the acquiring body are deleted from the 7/12 Extract recording the entries in respect of these lands. The accused Nos.3 and 4, the two infrastructure companies were desirous of developing a special township and intended to purchase land for the said purpose. The accused No.6 who was carrying the business of real estate development in the name of Jyo Development Corporation represented to the accused Nos. 3 and 4 that it had acquired rights in various parcels of lands in villages of Pimploli and Taje in Pune District and offered to transfer about 1000 Acres of land. On 26th December, 2006, the accused No.5- a practising lawyer in Pune engaged for due diligence, issued a public notice in relation to some of the lands proposed to be purchased, out of which, at least 5 parcels of land, were allegedly already acquired by MSRDC. No objection was received from MSRDC or any government authority to the public notice. On 9th January, 2007, the accused Nos.4 and 6 executed an agreement, under which, the accused No.6 agreed to transfer the lands to accused No.4 free from encumbrance and encroachment and also undertook the work of identifying the lands, due diligence etc. On 22nd January, 2007, the accused Nos.3 and 6 respectively executed an agreement on similar terms. Between 2007 and 2009, the accused No.5-Advocate carried out search of revenue record for verifying the title of the lands proposed to be purchased in Pimploli and Taje villages and issued search/title report for the same. In respect of several lands in village – Pimploli, the search report recorded that though 7/12 Extract of some of the lands in the name of Executive Engineer, MSRDC, was written, however, the same was deleted by mutation entry Nos.638, 639, 640 and 641. The said mutation entries reflected that the acquired areas and the name of the acquiring body has been deleted and, that is how, the name of MSRDC came to be deleted and it was claimed that the original owners had clear and marketable title. Thereafter, various sale deeds and agreements to sell were executed and registered between the accused Nos.1 to 4 as purchasers and, accused No.6 as confirming party and the farmers have claimed to own the lands in question as sellers either directly or through their power of attorney holders.

The petitioners in writ petition Nos. 4396 and 4572 of 2018, in their capacity as Sub-Registrars, registered the aforeasid sale deeds and agreements to sell and, the petitioners in rest of the petitions are the power of attorney holders of the owners of the lands in question.

In the year 2009, the purchasers became aware that out of 1353 Acres of land purchased by them in the villages of Pimploli and Taje, about 105 Acres of land in Pimploli still belonged to MSRDC and, therefore, the sellers did not enjoyed a valid title. Therefore, they executed and registered cancellation/correction deeds with respect to those transactions. The petitioners in writ petition Nos.4396 and 4572 of 2018 as Sub-Registrars of their respective jurisdiction also registered these cancellation/correction deeds which were presented before them.

On the basis of a complaint of an RTI Activist, the local police registered FIR on 15th October, 2009. The investigation, thereafter, was transferred to the CBI and the FIR was renumbered as RC/PUNE/2014/A/0015. After completion of the investigation, in the year 2017, CBI filed a charge-sheet in special CBI Court which is numbered special CBI case No.52 of 2017 for the offences punishable under Sections 120-B, 420 read with 511 of the IPC and Sections 13(2) and 15 read with 13(1)(d) of the PC Act.

6. At this stage, it is pertinent to note that neither the Talathi who recorded the mutation entry No.638, 639, 640 and 641 is arrayed as an accused nor the owners/sellers of the lands in question are made accused. It is also pertinent to note that the accused Nos.1 to 4, the purchasers as well as accused No.5 – Advocate and accused No.6 – Proprietor of M/s. Jyo Development Corporation) were discharged by the Trial court and the order of the Trial Court discharging them has become final inasmuch as the same is not challenged by the CBI in higher Court.

7. Mr. Kantawala and Ms. Salgaoncar, learned counsel for the petitioners (who were the then Sub-Registrars) in writ petition Nos.4396 of 2018 and 4572 of 2018 respectively made following submissions :-

a) No case as alleged in charge-sheet is made out against these petitioners and though other prime accused have been discharged, continuation of the impugned proceedings against the petitioners is abuse of the process and grave miscarriage of justice.

b) The registering officer cannot look into title and the scope of enquiry by such officer is limited to Section 34 of the Registration Act, 1908 and, therefore, there is no question of the petitioners perusing the 7/12 Extract and being aware that the lands in question did not have a clear title and that it belonged to MSRDC.

c) The law does not confer/jurisdiction upon a Registrar/Sub-Registrar to go into the correctness of the contents of a document presented before him for registration. A registering officer is not required to and not empowered to look into title or otherwise into the contents of a document. If the registering officer does not register the documents presented before him in accordance with the requirements of Section 34 of the Act, then, it would be in breach of his duties and obligations under the Act and particularly Section 35 of the Act which makes it mandatory in such cases for the registering officer to register the document. Therefore, refusal to register despite satisfaction of Section 34 would rather amount to an irregularity on part of the registering officer.

d) Rule 44(1)(i) of the Maharashtra Registration Rules has no application in the present case as the transaction in question is not prohibited either by State or Central Enactments.

e) There is no material whatsoever on record to prove the charges against the petitioners under Sections 13(2) and 15 read with 13(1)(d) of the Prevention of Corruption Act, 1988.

8. The learned counsel appearing for the petitioner in writ petition Nos. 4396 and 4572 of 2018 respectively in support of their submissions relied upon the decision of the Apex Court in ***Satya Pal Anand versus State of Madhya Pradesh and others 2016(10) SCC 767*** and the judgment of a Division Bench of this Court in ***Dalmia Bharat Sugar and Industries Ltd. versus the State of Maharashtra and ors. delivered on 17th March, 2017 in writ petition No.9956 of 2016***. In addition to this, the learned counsel also relied upon a decision of the learned Single Judge of this Court in criminal application No. 821 of 2010 which was filed by the petitioner in writ petition No.4572 of 2018 for grant of anticipatory bail.

9. Mr. Venegaonkar, learned counsel for the CBI, vehemently opposed the petitions. He submitted that the application filed by the petitioner in writ petition Nos.4396 and 4572 of 2018 for discharge came to be rejected and they have an alternative remedy to challenge the said orders before the learned Single Judge and, therefore, the present petitions under Article 226 of the Constitution of India seeking relief of quashing of the charge-sheet are not maintainable. Mr. Venegaonkar submitted that along with the sale deeds, the 7/12 Extracts of the lands in question were also annexed which revealed that the lands are already acquired by MSRDC and since the said petitioners were aware about the same, and No Objection under Rule 44(1)(i) of the Maharashtra Registration Rules ought to have been asked for. Mr. Venegaonkar also submitted that even the sellers/their power of attorney holders were aware that the lands in question were acquired by the MSRDC and, these accused (sellers as well as advocate/proprietor) entered into conspiracy with Sub-Registrars, the petitioners in writ petition Nos.4396 and 4572 of 2018 and attempted to grab the land belonging to the Government (MSRDC). Mr. Venegaonkar submitted that though there is no damage or loss sustained by the Government or MSRDC, all the accused attempted to cheat the Government by executing the sale deeds in question and thereby committing offence under Section 511 of the IPC. Mr. Venegaonkar lastly submitted that there is sufficient material on

record to proceed against these accused and, therefore, the petitions deserve to be dismissed.

10. Having gone through the petitions, the impugned charge-sheet and the submissions of the learned counsel appearing for the respective parties and having given anxious consideration, we find merit in writ petitions filed by the Registrars.

At the outset, we will deal with the submission regarding the maintainability of the petitions. The petitioner in writ petition Nos.4396 and 4572 of 2018 have approached this Court for larger relief of quashing of the charge-sheet on the ground that continuation of the impugned proceedings itself is an abuse of the process and grave miscarriage of justice. It is true that the petitioners had earlier filed applications for discharge before the Trial Court and the same were rejected. However, in our considered view, this cannot take away the petitioners larger right to seek quashing of the impugned proceedings including the charge-sheet on the ground that continuation of the same would result in abuse of process of law. It is now settled position that the petition for quashing under Section 482 of the Cr.P.C. can be entertained even after filing of the charge-sheet and during the pendency of the application for discharge in the Trial Court. Reference can be made to the decisions of the Apex Court in ***G. Sagar Suri and***

anr. versus The State of U.P. and ors (2000) 2 SCC 636 and ***Anand Kumar Mohatta and anr. versus State (Govt. of NCT of Delhi) Department of Home and anr. (Passed in Criminal Appeal No.1395 of 2018 on 15th November, 2018).*** We, therefore, hold that the petitions are maintainable and proceed to deal with them on their own merit.

11. Section 34 of the Registration Act which limits the scope of enquiry by registering officer reads as follows:

> **"34. Enquiry before registration by registering officer**.—
>
> (1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:
>
> Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.
>
> (2) Appearances under sub-section (1) may be simultaneous or at different times.
>
> (3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

The above provisions make it clear that the registering officer is duty bound to :

(i) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(ii) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(iii) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

Therefore, a competent person in terms of the Registration Act is merely a person who has executed or who has the valid authority to admit execution on behalf of the executant and not whether the person executing the document has title to the property and/or has the right to execute the document. It is also clear from the above provisions that the registering officer is not required to look into the contents of a document and/or title.

12. At this stage, it is also relevant to make reference to the provisions of Section 58 of the Registration Act which reads as follows :

> *"58.* ***Particulars to be endorsed on documents admitted to registration.***—
>
> *(l) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely:—*
>
> > *(a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;*
> >
> > *(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and*
> >
> > *(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.*
>
> *(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal."*

A conjoint reading of these provisions make it clear that if the executant admits execution of a document before the registering officer but refuses to endorse the document, then, the registering officer is required to mandatorily register it and endorse a note of such refusal. Therefore, it is amply clear that once the execution of a document is admitted, the registering officer has no choice other than to register it.

So far as the present case is concerned, there is neither any allegation nor any evidence brought on record that any of the sellers or their power of attorney holders refused to admit execution of the documents or refused to endorse the documents presented for registration.

13. Reference also must be made to Rule 44(1)(i) of the Maharashtra Registration Rules, 2005 which is heavily relied upon by Mr. Venegaonkar, learned counsel for the CBI which reads as follows :

> *"44(1) Before accepting any document for registration, a registering officer may not concern himself with its validity, but shall ascertain-*
> *(a).....*
> *(b).....*
> *(i) that, if the transaction which is intended by the document, is prohibited by any existing act of Central or State Government, then, the true copy of requisite permission or No Objection Certificate from the Competent Authority under the said act, has been attached along with the document, and that, the document is not written in contradiction with any vital term or condition mentioned in that permission or No Objection Certificate."*

Rule 44(1)(i) of the said Rules mandate that if the transaction is prohibited by any Central or State Act, then, the registering officer must call for No Objection Certificate. Mr. Venegaonkar, learned counsel was not able to point out any provision of Central or State Enactment, by which, the transactions in question are prohibited. The subject transactions are merely sale of the properties which are governed by Transfer of Property Act, 1882, whereby if the seller does not have clear and valid title, the purchaser do not acquire the same. However, since there is no Central or State Act prohibiting such transaction and, therefore, the reliance placed by Mr. Venegaonkar on Rule 44(1)(i) is misplaced and the said Rule cannot be invoked and applied in the present case.

14. The Hon'ble Apex Court had an occasion to consider the scope of enquiry by registering officer while registering a document in ***Satya Pal Anand (supra).*** In paragraph 41, the Apex Court has made following observations :

> *"41. Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the 1908 Act. In Park View Enterprises*

it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title as mentioned in the instrument. We agree with that exposition."

15. We would also refer to a Division Bench judgment of this Court in ***Dalmia Bharat Sugar and Industries Ltd.(supra),*** where the petitioner had approached this Court with a grievance about refusal to register sale certificate in accordance with the provisions of the Indian Registration Act, 1908 by the Sub-Registrar of Assurances, Class-II, Shirala, District-Sangli. In paragraphs 18, 19 and 21, the Division Bench after making reference to the observation of the Hon'ble Apex Court made in paragraph 41 of ***Satya Pal Anand (supra)*** observed thus :

18. Coming back to the impugned communication, reliance was placed on Clause (e) of Sub-Rule(1) of Rule 44 of the MaharashtraRegistration Rules, 2005. The Notification dated 27th July 2006published in the official gazette on 22nd July 2006 incorporates Clause(e) (which is in Marathi) and Clause (i) (which is in English). Clause(i) reads thus:

"44(1) Before accepting any document for registration, a registering officer may not concern himself with its validity, but shall ascertain –

(a) ....

(b) ....

(i) that, if the transaction which is intended by the document, is prohibited by any existing act of Central or State Government, then the true copy of requisite permission

> *or No Objection Certificate from the Competent Authority under the said act, has been attached along with the document, and that, the document is not written in contradiction with any vital term or condition mentioned in that permission or No Objection Certificate."*

19. On plain reading of Clause (i), we fail to understand how the Sub-Registrar of Assurances could have invoked the said clause (i). Sub-Rule (1) of Rule 44 of the said Rules of 1961 provides that before accepting any document for registration, a Registering Officer may not concern with himself with its validity but should ascertain various factors which are set out in Clauses (a) to (i). Clause (i) will apply when transaction covered by the document is prohibited by a Central or State Statute. If it is prohibited, the Registering Officer will have to ascertain whether requisite permission from the Competent Authority under the relevant enactment has been obtained and has been attached to the document. The Registering Officer will have to also ascertain whether the document is contrary to any of the terms and conditions mentioned in the No Objection Certificate granted by the Competent Authority. In the present case, neither the State Government nor the Applicants in the Civil Applications have shown any such statutory prohibition.

20.......

21. As held by the Apex Court, the Registering Officer under the Registration Act has no power to adjudicate upon the issue of title to the property. As held by the Apex Court in the case of Satya Pal

> *Anand, the function of the Registering Officer is purely administrative and not quasi judicial and he has no right to decide whether document presented for registration is executed by a person having title as mentioned in the instrument. Therefore, no such direction as sought by the Applicants can be issued.*

16. If the ratio of the decision of the Apex Court in S***atya Pal Anand (supra)*** and the decision of Division Bench of this Court in ***Dalmia Bharat Sugar & Industries Limited (supra)*** is applied to the facts and circumstances of the present case, then, it is clear that there is no merit in the allegations of the prosecution that merely because the petitioners who had registered the documents as Registrars and having been registered the documents, they are part of the alleged criminal conspiracy to cheat MSRDC. On the contrary, if the petitioners would have refused to register the documents because the sellers did not have title, then that would have amounted to breach of their duties under the Registration Act. The petitioners(Sub-Registrars) have, therefore, carried out their duties cast on them under the Registration Act. We are of the opinion that registration of a document is only a mode of admitting the execution of a document. The registration of a document is only a proof of existence of the document and execution of the document by the persons admit its execution by registering it. Registration do not in any manner validates the contents of the document. However, mere registration of a document where the seller does not have title to the

property which is being sold under the document, will not confer title upon the purchaser. Thus, registration of such documents whereunder no title in law is transferred to the purchasers, cannot be construed as an act in commission of the offence to cheat MSRDC which had title to the said lands. Therefore, registration of the such sale deeds or agreements to sell by these two petitioners in discharge of their duties as registering officer, does not even prima facie show their involvement in the alleged conspiracy.

17. At this stage, we will also consider the submission of Mr.Venegaonkar that the sale deeds were accompanied by 7/12 Extracts of the lands in question which made reference to the title of MSRDC in the ownership column. Apart from the legal position that the registering authority is not required to go into the title of the property while registering a document, we find that though initially name of MSRDC was entered into 7/12 Extracts of the lands in question, however, at later stage, by effecting mutation entry Nos.638, 639, 640 and 641, the entry was deleted, giving impression to the owners/power of attorney holders that these lands were deleted from acquisition or that they were no more required by the MSRDC and that is why, subsequently reference of MSRDC in 7/12 Extract was deleted. This is coupled with the fact that the search report of the lands in question was given by the Advocate/accused No.5 that the owners had a marketable title and the

subject lands in question were not encumbered. In the light of these facts, we do not find any merit in the contention of Mr. Venegaonkar that the registering officer ought not to have registered the documents.

18. This takes us to consider whether there is prima facie material against petitioners in writ petition Nos. 4396 and 4572 of 2018 to connect them with the offences under Section 420 read with 511 of IPC. Sections 420 and 415 of the IPC requires at the very least that a representation with a fraudulent intention should have been made to the person deceived. While the charge is of attempt to cheat MSRDC, there is nothing on record even prima facie to show that any representation whatsoever and/or inducement whether fraudulent or otherwise was made by the petitioners or any of the accused to MSRDC. MSRDC is not a complainant and neither is there any statement from MSRDC that any such representation or any attempt to deceive MSRDC to cause delivery of property was made to it. To meet the requirements of Section 420 of the IPC, there should be delivery of property, whereas admittedly in the present case, there has been no delivery of property and possession of the said lands was never disturbed by execution and registration of the documents in question. Admittedly, the MSRDC/Government of Maharashtra did not sustain any wrongful loss. On the contrary, the documents in question (sale deeds) have been cancelled by executants

and such cancellation and correction deeds were also registered. In these facts and circumstances of the case, mere execution and registration of the documents by the petitioners and subsequently cancellation of such documents, does not disclose any cheating or even an attempt to cheat inasmuch as no title is transfered under these documents, as the sellers themselves did not have title and such documents could not be construed to be the one put to use to cheat and deceive as they fall short of the ingredients of the offence of 'cheating'.

19. The petitioners in writ petition Nos.4396 and 4572 of 2018 have also been charged for the offence punishable under Section 120-B of the IPC. However, on close scrutiny, we find that no case under 120 B of the IPC has been made out against these petitioners. To constitute criminal conspiracy, there has to be an illegal act or legal act by illegal means. Registration of sale deed or agreement to sale is neither illegal nor prohibited by law. Registration of sale deeds in question is an official act to be performed by the Registrar in discharge of the official duty entrusted to them and, therefore, the provisions of Section 120-B of the IPC has no application in the present case.

20. So far charge against the petitioners under the Prevention of Corruption Act, 1988, is concerned, we have already recorded our

satisfaction that the petitioners have complied with the procedure under Sections 34 and 35 of the Registration Act and carried their duties as registering officer. There is no material brought before us in support of the allegation that the petitioners have by corrupt and/or illegal means obtained for themselves or for any other person any valuable thing or pecuniary advantage; or by abuse of their position as public servants or while holding office as public servants, have obtained for any person any valuable thing or pecuniary advantage. There is also no material on record about petitioners receiving gratification from any of the accused. Evidently, the petitioners have merely carried out their duties and, therefore, there is no material for charge under the provisions of the PC Act.

21. Now we will consider the case of the petitioners in rest of the petitions being writ petition Nos.4627, 4641, 4642, 4643, 4644 and 4645 of 2018. The said petitioners are the power of attorney holders of the sellers and they are charged with offences under Sections 120-B and 420 read with 511 of the IPC. As observed earlier, the sellers have not been arraigned as accused, however, the petitioners who are the power of attorney holders of the sellers have been impleaded as accused for the offences punishable under Sections 420 read with 511 and 120-B of the IPC.

22. Mr. Nankani, learned counsel for the petitioners in the above referred petitions submits that out of total 1300 Acres of land purchased by the respondent Nos.3 and 4, at later stage, it was found that the land admeasuring 105 Acres belonged to MSRDC and, thereafter, sale deeds in respect of this 105 Acres of land were cancelled and correction deeds were executed. He submitted that the disputed sale deeds were executed on the basis of mutation entry Nos.638, 639, 640 and 641 effected by the Talathi. The petitioners bona fide and in good faith believed that these lands belonged to the concerned owners and were not aware about being owned by MSRDC. In addition to this, he also submitted that no offence to cheat or attempt to cheat is made out from the charge-sheet. Mr. Nankani heavily relied upon a decision of the Apex Court in ***Mohammed Ibrahim and ors. Versus State of Bihar and anr. (2009) 8 SCC 751***.

23. Mr. Venegaonkar, learned counsel for the CBI, opposed these petitions vehemently on the ground that the petitioners viz. owners and/or their power of attorney holders were aware that the land in question was acquired by the MSRDC and despite this, they executed sale deeds thereby entering into conspiracy to cheat the MSRDC/Goverment of Maharashtra.

24. Having seen the petitions, charge-sheet and reply of the respondents and having given our anxious thoughts, we find merit in the submissions of Mr. Nankani. It is admitted fact that though initial name of MSRDC was recorded in the concerned 7/12 Extracts, the mutation entry Nos.638, 639, 640 and 641 came to be effected thereby deleting the name of MSRDC.

In the light of this, the petitioners (sellers/their power of attorney holders) were under a bona fide belief that the land is no more required by MSRDC and, thereafter, entered into transactions with the purchasers and, therefore, no fault can be attributed to them. The act of the petitioners, in our opinion, is therefore covered by provisions of Section 79 of the IPC inasmuch as the transactions, in question, were done by them in good faith under bona fide mistake of fact.

The Hon'ble Apex Court in ***Mohammed Ibrahim(supra)***, considered the case where the second respondent therein filed a complaint against the appellant Nos. 1 to 3 (accused Nos.1 to 3) and 2 others before the Chief Judicial Magistrate, Madhubani, alleging that he was the owner of Katha No.715, Khasra Nos.1971 and 1973 admeasuring 1 bigha, 5 kathas and 18 dhurs; that the first accused who had no connection with the said land and who had no title thereto, had executed two registered sale deeds dated 2-6-2003 in favour of the second accused in respect of a portion of the said land measuring 8 kathas and 13 dhurs; and that the third, fourth and fifth accused being the witness, scribe and stamp vendor respectively in regard to the sale deeds had conspired with accused 1 and 2 to forge the said documents; and that when he confronted accused 1 and 2 about the said forgery, they abused him and hit him with fists and told him that he can do what he wanted, but they will get possession of the land on the basis of the said documents. The Apex Court in the backdrop of the above said facts held that no ingredients of cheating were made out in the charge-sheet and that in such facts it may be possible for the purchaser to allege that the vendors had cheated them but when there was no false or misleading representation to the complainant. The relevant observation of the Apex Court are contained in paragraph Nos.19, 20, 21 and 23 which reads as under :

> *"19. 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).*
>
> *20. 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.*
>
> *21. 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."*

25. The present case is fully covered by the above observations. The present case as a matter of fact stands on better footing inasmuch as no complaint from the Government or MSRDC was made to the effect that any inducement/representation was made to them. Thus, in the absence of any such representation/inducement to the MSRDC and the purchasers having not filed any complaint, rather they were made accused and later on discharged, then, none of the ingredients of the

offence of cheating or attempt to cheat are made out. The petitioners are not attributed any independent role and cannot be fastened with liability independent of conspiracy or cheating, more so when the sellers whom the petitioners represented are not accused, besides this, the buyers have also been discharged. When all others concerned with the same transaction viz. the purchasers, the advocate, and the buyers are not charged with the offence of cheating or attempt to cheat, the petitioners alone cannot be part of any alleged conspiracy to do so.

26. In the light of the above observation, we are of the opinion that continuation of the criminal proceeding against the petitioners would be nothing but an abuse of process of Court, an exercise in futility and would result in grave miscarriage of justice. Consequently, the criminal proceedings in Spl. Case No.52 of 2017 arising out of the FIR No.RC/PUNE/2014/A/0015 are quashed and set-aside qua the petitioners in all the above petitions. Rule is, accordingly, made absolute.

27. All the aforesaid writ petitions stand disposed of.

[SMT.BHARATI H. DANGRE, J.] **[RANJIT MORE, J.]**