IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO. 91 OF 2021
AND
CRIMINAL APPLICATION (APL) NO. 312 OF 2021

CRIMINAL APPLICATION (APL) NO. 91 OF 2021

1. Vasantkumar S/o. Hiralal Khandelwal,
Aged about 78 years, Occu. - Business,

2. Shardadevi W/o. Vasantkumar Khandelwal,
Aged about 74 years, Occu.- Housewife,

Both nos.1 and 2 R/o. Khandelwal House,
Jatharpeth Road, Akola Dist. Akola.

3. Archana W/o. Sandeep Gupta,
Aged about 52 years, Occu.-Housewife,
R/o. 21, Shalimar Gulmohar, Cross Road
no.10, Juhu Scheme, Mumbai – 400 049. **---APPLICANTS**

---VERSUS---

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Ramdaspeth, Akola.

2. Alok S/o. Vasantkumar Khandelwal,
Aged about 53 years, Occu.- Business,
R/o. Basera Buildcon, Laxmi Nagar,
Randaspeth, Akola Dist. Akola. **---NON-APPLICANTS**

AND

CRIMINAL APPLICATION (APL) NO. 312 OF 2021

1. Sanjay S/o. Shankarlalj Biyani,
Aged 57 years, Occ. Business,

2. Pankaj S/o. Shankarlalji Biyani,
   Aged 47 years, Occ. Business,

3. Shailesh S/o. Kamalkishorji Biyani,
   Aged 51 years, Occ. Business,
   All R/o. New Radhakisan Plots, Akola,
   Tq. and Distt. Akola. **---APPLICANTS**

---VERSUS---

1. State of Maharashtra,
   Through Police Station Ramdaspeth, Akola,
   Tq. and Distt. Akola.

2. Alok Vasantkumar Khandelwal,
   Aged 53 years, Occ. Business,
   R/o. Flat No.302, Basera Buildcon, Laxmi
   Nagar, Akola, Tq. and Distt. Akola. **---NON-APPLICANTS**

In Cr.APL No.91/2021.
Shri S. V. Manohar, Senior Advocate assisted by Shri M.G. Sarda, Advocate for Applicants.
Shri S. M. Ghodeswar, A.P.P. for Non-applicant/State.
Shri Avinash Gupta, Senior Advocate Assisted by Shri Aakash Gupta, Advocate for Non-applicant No.2.
In Cr.APL No.312/2021.
Shri H. M. Mohata and Shri S. P. Bhave, Advocates for applicants
Shri S. M. Ghodeswar, A.P.P. for Non-applicant/State.
Shri S. P. Bhandarkar, Advocate for Non-applicant No.2.

CORAM : V. M. DESHPANDE AND AMIT BORKAR, JJ.

DATE : 28.03.2022.

JUDGMENT : (PER - AMIT BORKAR, J.)

1. Heard.

2. **Rule**. Rule made returnable forthwith.

3. Since both these applications arise from a common factual matrix and the same First Information Report, we are disposing of them by one judgment.

4. By these applications, the applicants in each application are challenging First Information Report No.485/2020 dated 29.12.2020 registered with the non-applicant No.1 – Police Station for the offences punishable under Sections 420, 467, 468, 471 read with Section 34 of the Indian Penal Code.

5. Since we are treating Criminal Application (APL) No.91/2021 as a lead application, we are referring parties and pleadings as stated in Criminal Application (APL) No.91/2020.

6. The First Information Report came to be registered against the applicants with the following accusations :

The applicant No.1 in Criminal Application (APL) No.312/2021 is accused No.1 (father), applicant No.2 is accused no. 2 (mother), and applicant No.3 is accused no. 3 (sister) of the non-applicant No.2. The applicants in Criminal Application (APL) No.312/2021 are accused Nos.4 to 6, who are purchasers of the property in dispute, admeasuring 2 acres 18 guntas out of Survey

No.25/2 admeasuring 17 acres 28 guntas situated at Malkapur, Taluka and District Akola (“said property” for short). One Arvindkumar Narayandas Khandelwal gifted said property by registered gift-deed dated 18.11.1969 in favour of the complainant. On the date of execution of the registered gift-deed, the complainant was three years old, and therefore, the gift-deed was executed in favour of the complainant through natural guardian - accused No.1. The complainant is the absolute owner and is in possession of the land given to him by the said gift-deed. The complainant came to know in February 2020 that accused No.1 sold out plot No.57 admeasuring 2978 Sq.Ft. to accused Nos.4 to 6 by registered sale-deed dated 01.12.2018. It is alleged that after getting knowledge of the said transaction, on enquiry by the complainant, it was revealed that the accused No.1 permitted Narayandas Hiralal to seek permission for conversion of gifted property and started using the said property for his personal use without obtaining permission from the Court. The accused No.1 converted the disputed property into non-agricultural land and got sanctioned layout of plots on 11.12.1972. It is alleged that the accused No.1 established Anupam Co-operative Housing Society on 20.05.1978 (as per record date is 20.10.1972) with the assistance of his friends and servants to grab the minor's property.

The accused No.1 transferred the minor's property to the said society without obtaining permission from the competent Court. Accused No.1 executed the sale-deed of the said property in favour of the Co-operative Housing Society. The said co-operative society transferred plots on 04.01.1973 and 05.01.1973 by registered sale-deed in favour of accused No.1. It is alleged that accused No.1 showed that the complainant had purchased the property from the said housing society with the intention to cheat the complainant. It is alleged that accused No.1 has, therefore, committed a criminal breach of the complainant's trust. It is alleged that the accused No.1 has prepared false documents and executed a registered will-deed dated 14.10.2019, claiming that he owns several plots. It is alleged that some of the said plots have been transferred by the accused No.1 in the name of accused No.3 by creating false documents. It is alleged that after getting knowledge of the illegal transaction made by accused No.1, non-applicant No.2 tried to convince accused Nos. 1 to 3 to execute appropriate documents in favour of the non-applicant No.2. However, he could not get success and therefore, non-applicant No.2 lodged First Information Report with non-applicant No.1 at Police Station.

7. The applicant Nos. 1 to 3 in Criminal Application (APL) No.91/2021, who are the accused Nos. 1 to 3, have challenged the registration of the First Information Report by way of filing the present application. The accused Nos. 4 to 6, have challenged the registration of the First Information Report by filing Criminal Application (APL) No.312/2021.

8. In both these applications, this Court issued notice to the non-applicants, and by way of ad-interim relief, it was directed that a charge sheet shall not be filed against the applicants without leave of this Court.

9. The non-applicants filed their replies in both applications stating that there is *prima facie* material to show the applicants' involvement in the crime alleged against the applicants. The non-applicant No.2 in Criminal Application (APL) No.91/2021 has filed written submission in support of his defence stating that execution of sale-deed without permission of the Court transferring property of the minor; transfer of property in favour of bogus and sham society consisting of close friends, employees and close relatives smacks of criminality and mala fide. It is further alleged that the said society was under the control of

applicant No.1. It is alleged that the entire exercise done by the accused No.1 was with the intention to grab the property of the minor.

10. We have heard Mr. S. V. Manohar, learned Senior Advocate and Mr. H. M. Mohata, learned Advocate for the applicants, Mr. Avinash Gupta, learned Senior Advocate and Mr. S. P. Bhandarkar, learned Advocate for the non-applicant No.2 and Mr. S. M. Ghodeswar, learned A.P.P. for the non-applicant/State.

11. Mr. Manohar learned Senior Advocate submitted that if the allegations made in the First Information Report are accepted to be correct in entirety, it does not disclose the ingredients of the offence of forgery (Sections 467 and 471 of the Indian Penal Code) or cheating (Section 420 of the Indian Penal Code) and forgery for the purpose of cheating (Section 468 of the Indian Penal Code). There is no material to show the fulfillment of ingredients of any offence alleged against the applicants. Therefore, the continuation of proceedings against the applicants would amount to an abuse of the process of the Court.

12. Mr. Mohata learned Advocate for the applicants in Criminal Application (APL) No.312/2021, submitted that the applicants/accused Nos.4 to 6 are purchasers of the property from the applicants in application No.91/2021. Therefore, the ingredients of offences alleged against them are not fulfilled, even if, the allegations are accepted as correct in their entirety.

13. Mr. Avinash Gupta, learned Senior Advocate appearing for the non-applicant No.2 in Criminal Application (APL) No.91/2021, submitted that the alienation of minor's property in the year 1972 in favour of co-operative society was without legal necessity. He submitted that the housing society whose favour sale-deed was executed in 1972 was controlled by the accused No.1. He submitted that the said society again transferred plots in favour of the accused No.1. Therefore, there was a dishonest intention at the inception to defraud the minor. He submitted that the investigation is at the initial stage, and therefore, at this stage, it is not necessary to interfere with the investigation.

14. Mr. Bhandarkar, learned Advocate appearing for the non-applicant No.2 in Criminal Application (APL) No.312/2021, submitted that the alienation of property of a minor is voidable at

the instance of the minor. He submitted that the facts alleged in the First Information Report cumulatively show that all the applicants conspired together to cheat the non-applicant No.2 – minor with the intention to cause wrongful gain to themselves and wrongful loss to the minor. He submitted that the allegations in the First Information Report, along with the material on record, show that the accused persons had the intention to cheat at the inception of the transaction and, therefore, *prima facie*, ingredients of the offences alleged against the applicants are fulfilled.

15. The precise issues which arise for consideration of this Court based on submissions made across the bar on the controversies involved may be formulated as under :

> Whether the natural guardian having executed the sale-deed of property of a minor in favour of a third party and thereafter repurchased part of it, can be prosecuted for offences under Sections 420, 467, 468, 471 of the Indian Penal Code that too, after more than 35 years from the date of attaining majority by the minor and after more than 48 years from the date of execution of sale-deed.

16. To clear the desks for a pointed analysis of the core question, it is apt to notice at the very outset that herein we are not called upon to pronounce on the ancillary question of the validity of sale deeds executed by the natural guardian in favour of the third party. The different considerations would apply in a situation where detailed reference is unnecessary. However, for effective adjudication of the said issue, it is necessary to consider the powers of natural guardian to alienate a minor's property and the consequences of such alienation after coming into force of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as "the said Act").

17. The said Act was a part of a more extensive exercise of codifying the Hindu Law completely after the Constitution of India, 1950, came into force. Before independence, there was no comprehensive Hindu Court enacted for specific branches of Hindu Law like Succession, Marriage and the law applicable to minors. The 1956 Act was a part of a codification exercise dealing with the law relating to minority and guardianship. The intent and object of enactment of Section 8 of the said Act were to equate the legal position of the natural guardian of a Hindu minor with guardian under the Guardians and Wards Act, 1890. Sub-

Section 3 of Section 8 of the said Act renders alienation of the immovable property by a natural guardian is voidable at the instance of a minor if it is without permission of the Court. The legislature has advisedly used this terminology and cannot be ascribed ignorance of the sharp legal distinction between a transfer, that is, void and one that is merely voidable at the instance of one of the parties. The essence of voidable contract has been authoritatively enunciated in Anson's celebrated work on the Law of Contract as under :

> *"A void contract, however, is a contract which one of the parties may rescind or affirm at his option. If he chooses to affirm the contract, or if he fails to exercise his right to rescind within a reasonable time so that the position of the parties has in the meantime, become altered, he may find himself bound by it; otherwise, he is entitled to repudiate his liability. Nevertheless, the contract is not a nullity from the beginning. Until it is rescinded, it is valid and binding".*

18. The term voidable has been defined in Black's Law Dictionary 10th Edition as under :

> *"Valid until annulled; esp., (of a contract) capable of being affirmed or rejected at the option of one of the parties. This term describes a valid act that may be voided rather than an invalid act that may be ratified."*

19. *Salmond on Jurisprudence*, 12th Edn. has noticed the distinction between valid, void and voidable in the following passage:

> *"… A valid agreement is one which is fully operative in accordance with the intent of the parties. A void agreement is one which entirely fails to receive legal recognition or sanction, the declared will of the parties being wholly destitute of legal efficacy. A voidable agreement stands midway between these two cases. It is not a nullity, but its operation is conditional and not absolute. By reason of some defect in its origin it is liable to be destroyed or cancelled at the option of one of the parties to it. On the exercise of this power the agreement not only ceases to have any efficacy, but is deemed to have been void ab initio. The avoidance of it relates back to the making of it. The hypothetical or contingent efficacy which has hitherto been attributed to it wholly disappears, as if it had never existed. In other words, a voidable agreement is one which is void or valid at the election of one of the parties to it.*"

20. In ***Dhurandhar Prasad Singh Vs. Jai Prakash Universit**y **And Ors.*** reported in ***(2001) 6 SCC 534***. The Hon'ble Supreme Court explained the distinction between void and voidable by observing in para No.22 as under :

> *"22. Thus the expressions "void and voidable" have been the subject matter of consideration on innumerable occasions by courts. The expression "void" has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded*

> *in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as the apparent state of affairs is real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable."*

21. It is a well-settled principle of law that transfer of immovable property by the natural guardian of a Hindu minor far from being void or being a nullity is, in fact, one which fully binds the other party unless set aside by a competent Court. The minor can always enjoy the benefit thereof and enforce the contract after ratifying or accepting the same. Such a transaction is perfectly valid until duly avoided by the minor before a competent Court.

22. It must be remembered that in the eyes of the law, the transfer is by the minor as the principal through the agency of his guardian. The minor in such a transfer is eo nomine a party to the said transfer. Once a person is eo nomine a party to a transaction that is merely voidable, then he cannot be conveniently ignored such transaction. Such distinction between a person who is eo nomine a party to the contract and a person who seeks to assail the same, who was not a party to the transaction, is well recognised. A useful reference in this connection can be made to the Full Bench decision of Hon'ble Madras High Court in ***Sankaranarayana Pillai, And Anr. vs Kandasamia Pillai*** reported in ***AIR 1956 Madras 670*** wherein after considering various Authorities, it was observed as follows :

> *"The principle deducible from this case is that where the transaction is with regard to the properties of the minor, it should-be deemed as if he is eo nomine a party."*

23. The seal of approval by the Privy Council to this proposition of law that the real contracting party is the minor himself and not merely his guardian is from the judgment of the Privy Council in the case of ***Sri Kakulam Subrahmanyam and anr. Vs. Kurra Subba Rao*** reported in ***AIR (35) 1948 Privy Council 95***.

The Privy Council examined the question in the context of sale-deed by the guardian mother on behalf of her minor son. It has been observed as under :

> ***"****The position of a guardian under the Hindu Law was considered by their Lordship' Board in 6 M.I.A. 393 and the following passage is to be found at p. 412:*
>
> > *"They consider that the acts of the Ranee cannot be reasonably viewed other vise than as acts done oh behalf of another, whatever description she gave to herself, or others gave to her."*
> >
> > *"Thus the act of the mother and guardian in entering into the contract of sale in the present case was an act done on behalf of the minor appellant —"*
> >
> > *xxx*
> >
> > *"Having regard to all the circumstances their Lordships are of opinion that the respondent is the person who most aptly answers the description of "the transferor" in the sense in which these words are used in S. 53A.—"*

24. The natural and direct corollary of the above discussion is that if a natural guardian executed the sale deed, the real contracting party is a minor himself.

25. The present factual matrix has to be tested on the anvil of the aforesaid enunciation of law. We have analysed the

ingredients of the offence under section 420 alleged against the applicants. The present proceedings concerned a First Information Report registered against the applicants, who include the father, mother, sister and purchasers. To constitute an offence under Section 420 of the Indian Penal Code, there should be deception or fraudulent inducement of a person to deliver property. As a consequence of such cheating, the accused should have dishonestly induced the person who is deceived to deliver such property to any person or to have made, altered or destroyed the whole or any part of a valuable security or anything which is signed or sealed and being capable of converted into a valuable security. To hold a person guilty of cheating as defined under Section 415 of the Indian Penal Code, it is necessary to show that he had the fraudulent or dishonest intention at the time of making the promise with an intention to retain the property and the inducement must be intentional.

26. The next offences alleged against the applicants are under Sections 467, 468 and 471 of the Indian Penal Code. Section 467 of the Indian Penal Code defines forgery of valuable security, will etc. To attract ingredients of Section 467, it is necessary to consider the definition of forgery defined under

Section 463 and the making of false documents as defined under Section 464 of the Indian Penal Code. Section 463 and 464 of the Indian Penal Code are read as under :

“**463. Forgery —** [Whoever makes any false documents or false electronic record or part of a document or electronic record, 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 any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

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 [electronic signature] on any electronic record;
(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],
with the intention of causing it to be believed that such document or part of the document, electronic record or [electronic 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 [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; 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 [electronic 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.

27. Section 468 of the Indian Penal Code is a forgery for the purpose of cheating, which reads as under :

"**468. Forgery for purpose of cheating —** Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

28. The analysis of Section 463 of the Indian Penal Code shows that a person must make false documents with the intention to cause damage or injury to a person in support of his claim or title with an intention to commit fraud.

29. The analysis of Section 464 of the Indian Penal Code shows that a person is said to have made false documents if,

1] He makes or executes a document claiming to be someone else or authorised by someone else or

2] He has altered or tampered with a document or

3] He obtains a document by practising deception or from a person not in control of his senses.

30. From the contents of the First Information Report, as well as material produced on record in the form of a case diary and the replies filed by the non-applicants, leave no manner of doubt that, on the basis of the allegations as they stand, following important features are emerged :

a] The applicant No.1 – natural guardian had executed sale-deed of property owned by the minor – non-applicant No.2 on 20.10.1972 in favour of Co-operative Housing Society, i.e. prior to a period of above 48 years.

b] The non-applicant No.2 became major on 04.11.1985, i.e. prior to 35 years of the filing of the First Information Report.

c] The non-applicant No.2 has filed Special Civil Suit No.17/2020, wherein no relief is claimed to challenge the validity of the sale deed dated 20.10.1972.

d] No averment is made in Special Civil Suit No.17/2020, even remotely suggesting allegations of cheating, forgery or any conspiracy.

e] Applicant No.1 father is aged about 78 years, and applicant No.2 mother is aged about 74 years.

31. The conspectus of the facts stated above shows that it is not the case of the non-applicant No.2 (complainant) that the applicants, by fraudulent and dishonest inducement, deceived him either by making a false or misleading representation to deliver any property or to give consent to retention thereof or intentionally induced him to do or omit to do anything, which he would not do or omits, if he were not so deceived. The non-applicant No.2 has not alleged that applicant No.1 pretended to be the exclusive owner of the property, which in fact, he was not while executing the sale-deed dated 20.10.1972. As the position of law on the alienation of the property of minor stands, the sale deed dated 20.10.1972 in favour of housing society was *de jure* executed by the minor (non-applicant No.2) himself through natural guardian applicant No.1.

32. Having scrutinised the contents of the First Information Report and other material on record in the light of offences under Sections 467, 468 and 471, it transpires that by execution of sale-deed dated 20.10.1972 and thereafter, repurchasing part thereof in the form of individual plots by applicant Nos.1 to 3, it cannot be said that the applicant Nos.1 to 3 had altered or tampered with the documents nor it can be said that the applicants had obtained

documents by practicing deception. It is not the case of the non-applicant No.2 that applicant No.1 - father – natural guardian had transferred his property by sale-deed dated 20.10.1972 by claiming to be someone else or authorised by someone else. To fulfill the ingredients of the offence under Section 464 of the Indian Penal Code, the documents which are the subject matter of the prosecution must be executed by a person claiming a property, which is not his, but he is claiming that he is someone else or authorised by someone else. If the documents in the form of sale-deed executed by the applicant No.1 and in favour of the applicants are not false documents then, there is no question of commission of forgery and, if there is no forgery then, the essential ingredients of an offence under Section 468 of the Indian Penal Code are not fulfilled. It needs to be noted that the purchasers of the property from the predecessor in the complainant's title are made accused. At this stage, it would be useful to make reference to the judgment of the Hon'ble Supreme Court's case of ***Mohammed Ibrahim and Ors. Vs. State of Bihar and Anr.*** reported in ***(2009) 8 SCC 751****,* wherein the Hon'ble Supreme Court in paragraphs Nos.18 to 23 held as under :

> *"18. 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.

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 valuable security (or anything signed or sealed and which is capable of being converted into valuable security).

20. <u>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</u>

<u>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</u>.

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.

22. 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

23. 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. <u>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</u>."*

33. In ***Murugan and Ors. Vs. Kesava Gounder (Dead) through Legal Representatives and Ors.*** reported in ***(2019) 20 SCC 633*** summarised law as regards alienation of the immovable property by natural guardian holding that, disposal of immovable property of minor by his natural guardian (father) by registered sale-deeds in contradistinction of Section 8(2) are voidable under Section 8(3). It is further held that rights conferred by such sale-deed are good against the whole world, and sale being voidable, it would continue to be treated as valid until it is avoided by filing a suit by a minor.

34. In ***Sardar Ali Khan Vs. The State of Uttar Pradesh through Principal Secretary Home Department & Anr***. reported in ***(2020) 12 SCC 51,*** while dealing with a similar situation, the Hon'ble Supreme Court quashed the complaint case on the ground

that the competent Civil Court was seized up of matter with regard to the validity of sale-deed and the suit was filed after 14 years. It is observed that allowing the proceedings to go on against the appellant in the said case, who is 87 years old, would be nothing but an abuse of the process. The Court further noted that there was no allegation of impersonation and forgery in the suit filed by the complainant. In the present fact, the allegations made in the present First Information Report are absent from the Civil Suit filed by the complainant.

35. The learned Advocate for the non-applicant No.2 placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***M/s. Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Ors.*** reported in ***2021 SCC Online SC 315***. The emphasis on paragraph No.52 of the said judgment to urge that the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the First Information Report, *prima facie*, discloses the commission of an offence.

36. He also placed reliance on the cases of ***State of Haryana Vs. Bhajan Lal*** reported in ***1992 Supp (1) SCC 335***, ***State of Orissa***

and anr. Vs. Saroj Kumar Sahoo reported in ***(2005) 13 SCC 540*** and ***Som Mittal Vs. Government of Karnataka*** reported in ***(2008) 3 SCC 574*** to urge that the power under Section 482 of the Criminal Procedure Code to quash First Information Report should be used sparingly and with circumspection. In our considered opinion, the judgments relied upon by the complainant are not applicable to the facts of the present case since, in the facts of the present case, we are satisfied that assuming all the allegations in the First Information Report is correct for considering an application for quashing under Section 482 of the Code of Criminal Procedure, no offences, as alleged, have been established.

37. On an overall consideration of the facts of the present case, we are satisfied that the First Information Report was filed against applicant No.1 - father, applicant No.2 - mother and applicant No.3 - sister to apply pressure on them and to cause harassment to them. It has been settled by a catena of judgments of the Hon'ble Apex Court that the criminal proceedings cannot be allowed to be used for settling, coercing or causing harassment to the accused persons.

38. In ***Mohammed Ibrahim*** *(supra),* the Hon'ble Supreme Court, in paragraph 8, has observed as under :

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

39. In view of the preceding analysis and from the aforesaid enunciation of law, there remains no scintilla of doubt that, even if the allegations made in the First Information Report are accepted in their entirety, it does not constitute offences under Sections 420, 467, 468, 471 and 34 of the Indian Penal Code.

40. For the reasons stated above, Criminal Application (APL) Nos.91/2021 and 312/2021 are allowed.

41. The First Information Report No.485/2020 dated 29.12.2020 registered with the non-applicant No.1 – Police Station, Ramdaspeth, Akola, District Akola for the offences punishable under Sections 420, 467, 468, 471 and Section 34 of the Indian Penal Code is quashed and set aside.

42. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

JUDGE **JUDGE**

RGurnule