Jose/Sonam

HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.800 OF 2017
WITH
CRIMINAL APPLICATION (APL) NO.345 OF 2019

CRIMINAL WRIT PETITION NO.800 OF 2017

1. Shri Sandip S/o Vishwalochan Jaini, Aged About 47 yrs. Occ: Business,

2. Shri Vishwalochan S/o laxmichand Jaini, Aged 75 yrs, Retired,

3. Smt. Jaishree W/o Vishwalochan Jaini, Aged 70 yrs, Housewife,

4. Smt. Vandana W/o Sandip Jaini, Aged About 42 yrs, Housewife,

All Petitioner Nos.1 to 4 are R/o Hira Kutir, Maskasath, Nagpur-2.

5. Shri Ramesh chand Babulal Jain, aged 75 yrs, Occ: Business,

6. Smt. Sulochana W/o Ramesh Jain, Aged about 70 yrs, Housewife;

7. Smt. Aradhana Vikas Jain, Aged about 44 yrs, Occupation: Housewife;

8. Shri Vivek S/o Rameshchandra Jain, Aged 47 yrs, Occ: Business;

9. Shri Vikas S/o Rameshchand Jain, Aged About 50 yrs, Occ: Business,

Petitioner Nos.4 to 8 are R/o Parwarpura, Itwari, Nagpur-2. … Petitioners.

Versus

1. State of Maharashtra, through its Secretary of Ministry of Home Department, Mantralaya, Mumbai.

2. The Police Station, Officer, local Crime Branch, Special Investigation Team, Civil Lines, Nagpur.

3. Shri Mukund S/o Shyamlal Ghate, Aged 60 yrs, Occ: agriculturist, R/o Dixit Wada, Buti Road, Sitabuldi, Nagpur, Tahsil and district Nagpur.

4. Shri Vartikar, Aged 54 yrs, Occupation: Service, R/o C/o Local Crime Branch, Special Investigation Team, GattiGudam, Nagpur, tehsil and District Nagpur.

5. The Deputy Commissioner of Police, Local Crime Branch, Special Investigation Teak, GattiGudam, Nagpur, Tahsil and District Nagpur. … Respondents

Shri Shashank V Manohar with Shri VS Giramkar, Advocates for the Petitioners.

Shri SS Doifode, APP for Respondent Nos.1 and 2.

Shri AS Mardikar, Senior Advocate with Shri Shakil Deshmukh and Vishal Mohod, Advocate for Respondent No.3.

WITH
CRIMINAL APPLICATION (APL) NO.345 OF 2019

1. Sagar Satyanarayan Ratan,
Age 40 Years, Occ: Business
Resident of Lakdaput, Aychit
Mandir, Mahal, Nagpur … Applicant

Versus

1. The Police Station Officer
Hudkeshwar Police Station,
Nagpur

2. Mukund Shyamlal Ghate
Age: 62 years, Occu: Not Known
R/o Dixit Wada, Buty Road,
Sitabuldi, Nagpur

3. Lalit S Wartikar
Police Inspector and Investigating
Officer, Special Investigating
Team, Crime Branch, Nagpur … Respondents

Shri SS Joshi, Advocate for the Applicant.
Shri SS Doifode, APP for Respondent Nos.1 and 3.
Shri AS Mardikar, Senior Advocate with Shri Shakil Deshmukh and Vishal Mohod, Advocate for Respondent No.2.

CORAM: **VINAY JOSHI &**
VALMIKI SA MENEZES, JJ.

RESERVED ON: **6th February, 2023.**

PRONOUNCED ON: **10th November, 2023.**

JUDGMENT (*Per Valmiki Sa Menezes, J.*):

1. These two matters were heard and taken up for final disposal together since they both arise from one and the same FIR and Final Report / Charge Sheet. Both these proceedings seek this Court's interference to quash and set aside First Information Report No. 0518/17 dated 23/08/2017 registered at Hudkeshwar Police Station, Nagpur under Section 120B, 420, 465, 467, 468, 471, 474 and 36 IPC along with the connected Final Report / Charge Sheet dated 18.11.2019 bearing No. 164/2019 pending before the Sessions Court, Nagpur.

In Criminal Writ Petition No. 800/2017, we issue Rule. Rule is made returnable forthwith and with the consent of the parties, the same is finally disposed of. Criminal Application (APL) No. 345/2019 filed under Section 482 of the Code of the Criminal Procedure 1973 is heard and disposed finally along with the above Writ Petition, with the consent of the parties.

2. We had heard these Petitions and reserved our Judgment on 6th February, 2023, after which the Petitioners, in Criminal Writ Petition No.800/2017, had filed on 04.07.2023 a Criminal Application No.114/2023 (APPW) seeking to permit the Petitioners to place further documents obtained under the Right to Information Act on record. This application was allowed to be circulated by us and the same was opposed by the Respondents by filing an affidavit dated 18.08.2023, after which further arguments were heard, both on the application for production of documents and in the Petition.

3. Considering that the application for taking on record additional documents obtained under Right to Information Act is required to be disposed of together with the Petitions, we have examined the documents relied upon by the Petitioners and have allowed the production of the same mainly for reasons recorded in the application. The main allegations in the Writ Petition and application under Section 482 Cr.P.C. are that the accused persons have committed the offence of cheating (Section 420 IPC) and forgery (Section 465 & 468 IPC). The Charge Sheet filed for the said offences is founded upon the allegations that the signatories to the sale deed dated 31.03.2017 which is alleged to be subject matter of the act of cheating and forgery, were not authorized to execute such sale on behalf of the Co-operative Society represented by them in the transaction.

The documents sought to be produced are the RTI application along with the annexed reply of the Information Officer stating that there was no acknowledgment of receipt of service on the accused persons who had executed the document, of an interim order dated 31.03.2017 passed by the Deputy Registrar of Co-operative Society, Nagpur, appointing an interim administrator for that Society. It is the case of the accused persons that they had no knowledge of this interim order appointing an administrator in supersession of their committee, and they signed the sale deed on behalf of the Society without such knowledge. The documents sought to be produced do state that the accused persons / Petitioners were not served with the order dated 31.03.2017 passed by the Deputy Registrar, which would be a relevant fact to conclude whether there was any fraudulent or dishonest intention right from the inception of the transaction, as would be necessary to make out the ingredients for Section 420 IPC. For this reason, we are of the opinion that the application requires to be allowed and the documents appended thereto be considered, as the same are public documents and record of a quasi-judicial proceeding.

4. These petitions seek to quash and set aside First Information Report No. 0518/17 dated 23.08.2017 registered at Hudkeshwar Police Station, Nagpur under Section 120B, 420, 465, 467, 468, 471, 474 and 36 IPC along with the connected Final Report / Charge Sheet dated 18/11/2019 bearing No.164/2019 pending before the Sessions Court, Nagpur.

The allegations at the behest of the complainant, Shri. Mukund Shamlal Ghate in the FIR / complaint primarily alleged that one Shaligram Udhaorao Dhore, who was the Secretary of a Co-operative Housing Society known as Milind Co-operative Housing Society, had sold 70 plots belonging to the said society in the year 1987-88 to the members of the society after which he resigned in the year 2003. It is further alleged that thereafter the Petitioners were inducted as office bearers of the society with the Petitioner No. 1 being the President. The further allegation is that the Petitioner No.1 and other office-bearers passed a resolution under which 4 acres of land belonging to the Society under Khasra No.42/2, were resolved to be sold to one Sagar Ratan (Applicant / Accused in Criminal Application No. 345/2019), as director of M/s Laxmi Ratan Builders. This resolution was dated 05.04.2017.

5. It was further alleged that one Crown Society had entered into an agreement with the said Shaligram Dhore on 21.04,1997, in which Dhore had agreed to execute a sale deed of the society's land in favour of Milind Co-operative Society. The Complainant further alleged that he had purchased a plot from out of this land under Khasra No.42 which admeasures about 9 acres of which 5 acres was owned by Crown society, while the remaining land admeasuring 4 acres was sold to Milind Co-operative Society. It was further alleged that on 05.04.2017, by a sale deed of that date, 4 acres of land from Khasra No. 42/2 belonging to Milind Housing Co-operative Housing Society was sold to Sagar Ratan, Director of M/s Laxmi Ratan Builders, which deed was executed and registered under the signature of the Petitioner No.1 and the other accused persons who are Petitioners in Writ Petition No.800/2017. On these broad allegations, the FIR was lodged and after investigation of the same, Charge Sheet was filed against the Petitioners for offence under Sections 120B, 420, 465, 467, 468, 471, 474 and 36 IPC.

6. Certain further undisputed background facts may also be taken note of, as are borne from various records and proceedings amongst the contesting parties, which have a bearing on the decision of these matters:

(a) The land in question under Khasra No. 42/2 was purchased by the Milind Sahakari Gruha Nirman Saunstha Maryadit, Nagpur or the Milind Housing Co-operative Society (For short "The Society") by a registered Deed of Sale dated 21.04.1988 from one Motilal Ghate and 3 others. The name of the society was recorded in the survey record under Form 7 & 12.

(b) On 13.07.2008, the Respondent No.3, complainant, who is not a member of the society, alleged that he was the son of the original vendor, made a complaint to the Hingna Police Station that a public notice was published by the society on 09.06.2008 that he intended to sell the property and invited objections to the same. The Respondent No.3 alleged that such sale could not be made by the earlier Secretary of the Society, on which basis the complaint was investigated and no further steps were taken by the police, who treated the complaint as a Non Cognizable Case.

(c) Feeling aggrieved by the Society's act of constructing a compound wall around the property, one Uttam Pawar filed a Civil Suit bearing No.1069/2009 for declaration and permanent injunction against the Society and one Milind Puranik alleging that the Society was attempting to sell the property to the said Puranik; the suit was dismissed by the Civil Court on 19.12.2009 holding that it had no jurisdiction in view of the same being a co-operative dispute. The said Uttam Pawar filed a Co-operative Dispute bearing no.366/2011 before the Co-operative Court at Nagpur which is pending adjudication.

(d) On 04.08.2009, the members of the Society in the Annual General Meeting, resolved to sell the land in dispute to a prospective purchaser, and thereby appointed the Petitioner No.1 to negotiate such a transaction. Ultimately, the property was sold to M/s Laxmi Ratan Builders Pvt. Ltd. by registered Sale Deed dated 31.03.2017. The accused/Applicant Sagar Ratan in Criminal Application No.345/2019 has signed this Deed on behalf of the said company as its Director.

(e) Pursuant to registering this Deed of Sale, Laxmi Ratan Builders Private Ltd. (The Company), applied for a mutation in the Revenue records under Maharashtra Land Revenue Code (The Code), pursuant to which a mutation entry bearing no. 3271 dated 13.04.2017 was made with respect to the said land in the name of the company. This mutation entry was set aside by order dated 07.08.2017 passed by the Sub Divisional Officer purporting to exercise powers under Section 257 of the Code.

(f) The order dated 07.08.2017 came to be challenged in Writ Petition No.7007/2017 before this Court which was ultimately set aside by this Court's Judgment dated 12.12.2018 wherein this Court has, after observing that some of the Respondents including Mukund Ghate had taken recourse to have raised a co-operative dispute with regard to the right of the Executive Members to represent the Society, and held the order dated 07.08.2017 of recall of the mutation to be contrary to law. That Writ Petition was allowed, the order recalling the mutation was quashed and set aside and the company was put to terms by recording its undertaking dated 29.11.2018 not to create any third party rights or interest over the land under Khasra No.42/2. Consequently, the mutation entries in favour of the company stood restored.

(g) It appears from the records that the Respondent No. 3 in the meanwhile filed a complaint dated 19.06.2017 bearing Crime No. 405/2016 against Petitioner No. 1 for offences punishable under Section 448 and 427 IPC, pursuant to which the Petitioner No.1 filed Writ Petition No. 265/2017 praying for quashing of Crime No.405/2016; the matter has been adjourned before this Court from time to time.

(h) Thereafter, yet another complaint was made by Respondent No.2 under Crime No. 518/2017 on 22.08.2017, which is the subject matter of the present Petition. This complaint came to be filed a few days after the passing of the order dated 07.08.2017 of the Sub Divisional Officer recalling the aforementioned mutation entries in favour of the Company, which order was ultimately set aside by this Court.

7. It is in this background and set of undisputed facts that we have to examine whether the allegations made in the impugned FIR / Charge Sheet make out an offence under Sections 120B, 420, 465, 467, 468, 471, 474 and 36 IPC.

8. The primary contention raised by the Petitioners is that neither the FIR nor the material in the Charge Sheet makes out ingredients of an offence under Sections 120B, 420, 465, 467, 468, 471, 474 and 36 IPC.

Shri Shashank V Manohar, learned Advocate for the Petitioners submitted that the whole purpose for filing the FIR was to pressurize the purchaser company and its director to accept claims raised by the Respondent No.2 and other persons who had filed various proceedings to stall the execution of the sale deed and development of the property. He further submits that the complaint is frivolous and if at all the Complainant had any claim over the property, the entire controversy revolved around the civil dispute with no criminal liability that could be imputed to the accused persons.

It was further the contention of the learned Advocate for the Petitioners that keeping in mind the background dispute over the property commencing from the year 1988, and considering the civil and co-operative disputes that were pending or had in the past been disposed of with regard to the property, the entire exercise of filing an FIR smacks of mala fides, the ingredients of none of the offences alleged having been made out, on a plain reading of the contents of the complaint and other material produced during the investigation. It was further submitted that the FIR/Charge Sheet is nothing but a civil dispute, if at all, in the garb of a criminal case. The allegations in the complaint do not make out any act of deception or demonstrate prior intention of cheating before entering into the sale transaction. This is clear from the fact that the sale deed is a registered document pursuant to which a mutation was validly carried out and even upheld by this Court in its judgment dated 12.12.2018 in Writ Petition No.7007/2017.

9. It was further submitted by the Petitioners that the allegation in the complaint is that the act of cheating has been committed from 2002 till 2017, though the only transaction in which the accused and the Director of the Company, Sagar Ratan are involved is the execution of the deed of sale dated 31.03.2017; there are no particulars of in what manner the accused had from the inception, an intention to cheat or commit fraud. It is further submitted that if one peruses the entire complaint, except for the allegation that the entire family of the Petitioner No.1 has been illegally made Executive Committee Members of the Society, there is no allegation against the Petitioner Nos.2 to 9 in the entire complaint that makes out an offence of cheating or forgery. Even the allegation that Executive Committee Members were all from one family cannot be sustained since these persons were all elected to various positions in the Executive Committee of the Society.

It was further submitted that the names of the entire family of the Petitioner No.1 are roped into the FIR since Petitioner No.1 had approached this Court in Criminal Writ Petition No.765/2017 for quashing of an earlier complaint made by Uttam Pawar in Crime No.405/2016, to attempt putting further pressure on the Petitioners.

In support of his contention that the contents of the complaint do not make out any offence under Section 420 (cheating) or Section 467 (forgery) which are the main offences, the learned Advocate for the Petitioners has cited the following Judgments:-

a) ***Mitesh Kumar J. Shah vs. State of Karnataka*** *reported in AIR 2001 SC 5298*,
b) ***Mohammed Ibrahim vs. State of Bihar*** *reported in (2009) 8 SCC 751*,
c) ***State of Haryana vs. Bhajan Lal*** *reported in 1992 Supp (1) SCC 335*,
d) ***Mahmood Ali vs. State of U.P.*** *reported in (Criminal Appeal No. 2341/2023) passed by the Supreme Court on 08 August, 2023.*
e) ***Joseph Salvaraj A. vs. State of Gujarat*** *reported in (2011) 7 SCC 59.*

10. Countering these submissions, learned Senior Advocate Shri AS Mardikar appearing for the Complainant, submits that a reading of the contents of the complaint filed by Respondent No.3, and his statement under Section 161 Cr.P.C. recorded by the Police would reveal that the property was in possession of Mukund Ghate, and that being the factual situation, when attempts were made to take forcible possession of the land by the accused by executing a sale deed, an offence of criminal trespass had been made out against the accused, he argues that execution of an earlier sale deed gives constructive notice to the owners of 70 plots illegally sold under the signature of the Petitioners and any transfer made by sale deed thereafter would amount to defrauding the owners of the property. He further submits that the resolution passed by the Society as claimed by the executive committee was not one for sale of the property but first obtained permissions for its sale and consequently the committee was not authorised to execute the deed of sale. It was also submitted that three statements had been recorded by the Police of Ramzan, Jayant and Anil wherein there are clear averments that the signatures of seven members on the resolution were forged and not of the signatories thereon, hence clearly an offence of forgery under Section 468 IPC had been made out.

11. It was further submitted on behalf of the Complainant that an Official Liquidator having been appointed on 31.03.2017, the sale deed being executed of the property in favour of the Complainant was a nullity and was executed without completing any exercise of due diligence; these facts are also borne out from the statements of several plot owners who have alleged that the sale deed could not have been executed. It is further the Complainant's contention that the property was worth Rs.9 crores but was sold at a mere Rs.3 crores, much below its market value; this submission was sought to be substantiated by taking us through the letter of the Investigating Officer calling for valuation of the property under the Ready Reckoner, wherein the rate specified was of Rs.7001/- per square metre which on calculating at that rate for the area of the property should be a market value of Rs.11.43 crores.

12. It was further submitted by the learned Counsel for the Respondent No.3 that the deed of sale could not have been executed since the same was an agricultural property and had no conversion through non-agricultural use nor did it have any development plan issued by the Nagpur Improvement Trust. The transaction was also contrary to the provisions of the Fragmentation Act. As such, the entire sale transaction is illegal and therefore, a product of cheating and forgery.

He further submits that the entire transaction is contrary to the provisions of the Maharashtra Land Revenue Code as the concerned land is not covered as a settlement area in the Regional Plan and as such, permissions were required for conversion of the land. He then takes us through the Judgment of the Supreme Court in *Bhajan Lal* (supra) and submits that the present case does not fall in any of the exceptions laid down in that judgment, to enable this Court to quash the FIR/complaint. In support of his submissions, the learned Advocate for the complainant has cited the following judgments:-

a) ***Priti Saraf vs. State of NCT Delhi*** *reported in 2021 SCC OnLine SC 206*,
b) ***Supriya Jain vs. State of Haryana*** *reported in 2023 SCC OnLine SC 765*,
c) ***V.N. Patil vs. K. Niranjan Kumar*** *reported in (2021) 3 SCC 661*,
d) ***CBI vs. K.M. Sharan*** *reported in (2008) 4 SCC 471*.

13. Learned Advocate Shri SS Joshi for the Applicant/Accused in Criminal Application 345/2019 who is the Director of and signatory for the purchaser of the property, under the sale deed executed by the Society, has submitted that the accused purchaser representing the company, is a bona fide purchaser for value under the sale deed; note will have to be taken of the fact that there is no challenge thrown or a declaration sought that the sale deed is void, by the Complainant in any Court. He further submits that there is no material on record or statement of any witness that the signatory on behalf of the purchaser are the accused Sagar Ratan, and any previous knowledge of past transactions of the Society, nor is there any material to demonstrate that he was part of some larger conspiracy. The sale deed was executed for a value, the consideration for which has passed to the Society and it was no one's case that no consideration was paid for the transaction. He further submits that till date, there being no challenge to the sale deed, any suit to upset the same would be beyond limitation as the Company that has purchased the property is the ostensible owner and there are presumptions in terms of Section 164 of the Land Revenue Code as to the possession of the purchaser. Apart from this, the judgment of this Court dated 12.12.2018 in WP 7007/2017 has laid to rest the controversy regarding mutation with respect to the entries in the revenue records of the property and these facts cannot be overlooked, by clearly pointing to the direction that this is a case of a civil dispute being given the colour of a criminal case.

Learned APP Shri SS Doifode has adopted the arguments of Shri Mardekar and supported the case of the Prosecution arguably that there was a clear case made out of forgery of the resolution passed by the Society in favour of its Executive Committee. This forgery has been clearly alleged in the statements of the witnesses and in view of the fact that an Official Liquidator/Administrator had been appointed to run the affairs of the Society, such a resolution could not have been passed. He submits that there is enough material on record to make out a prima facie case for the offences alleged and the matter needs to go for trial. He further submitted that the veracity of the documents or the allegation made in various statements recorded of the witnesses may not be assessed at this stage and the matter should be decided on the basis of a full trial.

14. The question before us is whether, from the allegations made in the complaint/FIR and the material on record, an offence has been made out against the Petitioners under Sections 120B, 420, 465, 467, 468, 471, 474 and 36 IPC.

Before adverting to the material on record, we may examine the key ingredients for making out an offence under Section 420 IPC for cheating and under Section 463 IPC for forgery. The other provisions of the Indian Penal Code alleging offences in the present case are Sections 465, which prescribes the punishment for making a false document as referred in Section 464, Sections 468-forgery committed for the purpose of cheating, Section 471-using a forged document and Section 474-possessing a forged document are all connected with the alleged two offences of cheating under Section 420 and forgery under Section 463 IPC.

15. The offence of cheating is defined under Section 415 IPC and requires the accused person to, by deceiving any other person, fraudulently or dishonestly induces such person to deliver any property. Cheating can also be an act of omission which causes or is likely to cause damage or harm to another person in body, mind, reputation or property. In other words, the offence essentially requires deception or a dishonest concealment of fact which results in inducing a person to delivery property.

Under Section 420 IPC, a person committing the act of cheating by inducing another person to deliver property may be punishable with imprisonment extending to seven years with fine. Thus, the ingredients of this offence should have the following elements:

i. There should be a fraudulent or dishonest inducement,

ii. The person so deceived should be induced to deliver property,

iii. The person so deceived should be intentionally induced to part with property,

iv. If the inducement is by an act of omission, such act should be one which causes or is likely to cause damage or harm to the person induced, in body, mind, reputation or property.

16. Forgery is defined in the IPC in Section 463, to be the act of making a false document or false record with the intent to cause damage or injury to the public or any person or title or with intent to commit fraud.

Forgery may be manifested in various ways, amongst which making a false document (Sections 464 and 467), or with intention that a document is used for the purpose of cheating (Section 468), or using a forged document or record knowingly as if the same were genuine (Section 471) or possessing a forged document knowing it to be a forged one (Section 474) are some of them.

17. The rival submissions made by the learned Counsel for the accused and Complainant/ Prosecution would require us to examine whether the background facts and the contents of the allegations in the complaint make out an offence of cheating or forgery or whether the same are purely a civil dispute being given the colour or a criminal case.

For this purpose, we deem it appropriate to, before examining the contents of the complaint/FIR, to refer to certain case law rendered by the Supreme Court and various other High Courts, which would assist in arriving at our decision

18. At the outset, we refer to a recent judgment of the Supreme Court in *Mahmood Ali* (supra) which lays down the parameters and scope of the application of inherent powers under Section 482 Cr.P.C., that the scope may use whilst examining such a matter. Whilst examining a case where allegations were made for offences under Sections 420, 467, 468 and 471

IPC, and what material besides the complaint, is to be looked into, the Hon'ble Supreme Court has observed as under.

> "*10. We are of the view that even if the entire case of the prosecution is believed or accepted to be true, none of the ingredients to constitute the offence as alleged are disclosed. It is pertinent to note that the FIR in question came to be lodged after a period of 14 years from the alleged illegal acts of the appellants. It is also pertinent to note that in the FIR no specific date or time of the alleged offences has been disclosed.*
>
> *12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the*

> *course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.*"

Thus, in exercise of powers both under Section 482 Cr.P.C. and under Article 226 of the Constitution of India, as observed above, it would not be enough for a Court examining a case of cheating and forgery to look in to the allegations in the FIR/complaint alone, but for the purpose of ascertaining whether the ingredients of these offences were made out, the Court has a duty to look into all attending circumstances emerging from the record of the case and if need be, need not restrict itself to the documents appended to the charge sheet and can look into the overall circumstances leading to the initiation of the case.

19. In *Mitesh Kumar J. Shah* (supra), the Supreme Court has examined a case alleging an offence under Section 420 IPC and whether the allegations made out the ingredients of the offence as set out in the complaint. That was a case where the main allegation was that the flats sold by the concerned company belong to the share of the complainant and were sold in excess of the company's rights. Whilst dealing with the rival contentions, the following submissions were recorded:-

> "*15. It is further submitted that the entire dispute between the parties pertains to an alleged sale of flats in excess of the share agreed between the parties, and that the complaint is filed by Respondent No. 2 for settling scores in a dispute which is entirely of civil nature.*
>
> *16. The Appellants placed reliance on the judgment of this Court in case of Prof. R. K. Vijayasarathy & Anr. Vs. Sudha Seetharam & Anr.1, to substantiate the above stated argument. The relevant paras referred are*

as hereunder:-

> *"23. The jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court.*
>
> *24. In the present case, the son of the appellants has instituted a civil suit for the recovery of money against the first respondent. The suit is pending. The first respondent has filed the complaint against the appellants six years after the date of the alleged transaction and nearly three years from the filing of the suit. The averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute offences under the Penal Code. An attempt has been made by the first respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the first respondent against the appellants constitutes an abuse of process of court and is liable to be quashed."*

26. Having perused the relevant facts and contentions made by the Appellants and Respondents herein in our considered opinion, the following three key issues require determination in the instant case:

- Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are prima facie made out?

- Whether sale of excess flats, even if made, amounts to a mere breach of contract or constitutes an offence of cheating?

- Whether the dispute is one of entirely civil nature and therefore liable to be quashed?

<u>*Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are prima facie made out?*</u>

28. In the instant case, the complaint levelled against the Appellants herein is one which involves commission of offences of criminal breach of trust and cheating. While a criminal breach of trust as postulated under section 405 of the Indian Penal Code, entails misappropriation or conversion of another's property for one's own use, with a dishonest intention, cheating too on the other hand as an offence defined under section 415 of the Indian Penal Code, involves an ingredient of having a dishonest or fraudulent intention which is aimed at inducing the other party to deliver any property to a specific person. Both the sections clearly prescribed 'dishonest intention', as a pre-condition for even prima facie establishing the commission of said offences. Thus, in order to assess the relevant contentions made by the parties herein, the question whether actions of the Appellants were committed in furtherance of a dishonest or fraudulent scheme is one which requires scrutiny.

35. Upon a careful assessment of such facts, by no stretch can it be concluded that the Appellants herein have deceptively or intentionally tried to sell excess flats if any, as contended by Respondent No. 2. Here, it must also be borne in mind that subsequent to the revocation of GPA, it was the Appellants herein who had first resorted to arbitration proceedings on 02.03.16 for redressal of dispute between the parties, to which Respondent No 2 had accordingly filed his statement of objections dated 09.03.16. It was only on 29.03.16 that Respondent No. 2 had filed the FIR in question bearing Crime No. 185/2016 against the Appellants. Moreover, it was Respondent No. 2 who had withdrawn his prayer with respect to selling of four excess flats by the Appellants, only to pursue the same in civil proceedings.

37. Although, there is perhaps not even an iota of doubt that a singular factual premise can give rise to a dispute which is both, of a civil as well as criminal nature, each of which could be pursued regardless of the other. In the instant case, the actual question which requires consideration is not whether a criminal case could be pursued in the presence of a civil suit, but whether the relevant ingredients for a criminal case are even prima facie made out. Relying on the facts as discussed in previous paragraphs, clearly no cogent case regarding a criminal breach of trust or cheating is *made out.*

38. The dispute between the parties, could at best be termed as one involving a mere breach of contract. Now, whether and what, is the difference between a mere breach of contract and an offence of cheating has been discussed in the ensuing paragraphs.

Whether sale of excess flats even if made amounts to a mere breach of contract?

39. This Court in the case of Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr.; (2000) 4 SCC 168, has observed:-

> *"15. ….that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise… "*

40. Applying this dictum to the instant factual matrix where the key ingredient of having a dishonest or fraudulent intent under sections 405, 419 and 420 is not made out, the case at hand, in our considered opinion is a suitable case necessitating intervention of this Court.

Whether the dispute is one of entirely civil nature and therefore liable to be quashed?

41. Having considered the relevant arguments of the parties and decisions of this court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to *an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this court, by way of an observation rendered in the case of M/s Indian Oil Corporation Vs. M/s. NEPC India Ltd & Ors.7, as under :-*

> *"14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law."*

44. Furthermore, in the landmark judgment of State of Haryana & Ors. Vs. Ch. Bhajan Lal and Ors.9 regarding exercise of inherent powers under section 482 of CrPC, this Court has laid down following categories of instances wherein inherent powers of the can be exercised in order to secure the ends of justice. These are:-

> *"(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*
>
> *(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;*
>
> *(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*
>
> *(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;*

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

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

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

45. Applying this dictum to the instant factual matrix, it can be safely concluded that the present case clearly falls within the ambit of first, third and fifth category of the seven categories enlisted in the above said judgment. The case therefore warrants intervention by this Court, and the High Court has erred in dismissing the petition filed by the Appellants under section 482 CrPC. We find that there has been attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal color to it."

20. In *Mohammad Ibrahim* (supra) which was also a case wherein the ingredients of offences of cheating and forgery were examined, wherein the primary allegation was that a plot sold was part of a land allotted to the complainant; after considering the definitions of forgery and ingredients of offences under Sections 464, 467, 470 and 420 IPC, the Supreme Court has held as under.

"*7. The question that therefore arises for consideration is whether the material on record prima facie constitutes any offences against the accused. The contention of the appellant is that if the allegations made in* *the complaint and FIR, even if accepted to be true in entirety did not disclose the ingredients of any offence of forgery (Sections 467 and 471) or cheating (Section 420) or insult (Section 504) or wrongful restraint (Section 341) or causing hurt (Section 323) and there was no other material to show any offence and therefore, their application ought to have been accepted.*

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

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

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property *describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.*

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

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.*

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.

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. 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.

21. In *Joseph Salvaraj A.* (supra), which was also a case wherein the allegations of cheating under Section 420 were examined, the Supreme Court has held as under:

"*16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's*

FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents etc. or not.

17. In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the appellant. It does not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in Devendra v. State of U.P., 2009 (7) SCC 495, relevant part thereof is reproduced hereinbelow:

> *"A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out."*

18. In fact, all these questions have been elaborately discussed by this Court in the most oftquoted judgment in State of Haryana Vs. Bhajan Lal; 1992 (Suppl) 1 SCC 335, where seven cardinal principles have been carved out before cognizance of offences, said to have been committed by the accused is taken. The case in hand unfortunately does not fall in that category where cognizance of the offence could have been taken by the court, at least after having gone through the FIR, which discloses only a civil dispute.

19. The appellant cannot be allowed to go through the rigmarole of a criminal prosecution for long number of years, even when admittedly a civil suit has already been filed against the appellant and Respondent 4 complainant, and is still sub judice. In the said suit, the appellant is at liberty to contest the same on grounds available to him in accordance with law as per the leave granted by trial court. It may also be pertinent to *mention here that the complainant has not been able to show that at any material point of time there was any contract, much less any privity of contract between the appellant and Respondent 4 complainant. There was no cause of action to even lodge an FIR against the appellant as neither the complainant had to receive the money nor he was in any way instrumental to telecast "GOD TV" in the certain areas of Ahmedabad. He appears to be totally a stranger to the same. appellant's prosecution would only lead to his harassment and humiliation, which cannot be permitted in accordance with the principles of law.*"

22. Keeping in view the principles laid down in the afore-quoted judgments of the Supreme Court, we would proceed to examine the three main issues which would arise for determination in the present case, namely:

a) Whether the necessary ingredients of offences punishable under Sections 420, 467, 468, 471 and 474 IPC are prima facie made out?

b) Whether execution and registration of sale deed dated 31.03.2017 amounts to an offence of cheating and forgery?

c) Whether the dispute is of civil nature and is liable to be quashed?

23. Whether the necessary ingredients of offences punishable under Sections 420, 467, 468, 471 and 474 IPC are prima facie made out?

Under Section 420 IPC, the ingredients of this offence should have the following elements:

i) There should be a fraudulent or dishonest inducement,

ii) The person so deceived should be induced to deliver property,

iii) The person so deceived should be intentionally induced to part with property,

iv) If the inducement is by an act of omission, such act should be one which causes or is likely to cause damage or harm to the person induced, in body, mind, reputation or property.

Further, there should be a "dishonest intention", as a precondition for even prima facie establishing the commission of the offence. The actions of the Petitioners would require to be tested to determine whether their acts were in furtherance of a dishonest or fraudulent scheme right from the inception.

24. In the facts stated in the complaint, the main allegation by the Complainant, who admittedly is neither a member of the Society that owns the property sold or is in any manner connected with it, was that the deed of sale was executed by the Executive Committee contrary to the resolutions of the General Body empowering a specific person to negotiate the sale. Further allegation made in the complaint was that the property was an agricultural land and the sale was contrary to the Land Revenue Code and without amalgamation of the property, a further allegation made in the complaint that the original sale executed by the Complainant's father and his brother in favour of the Society was itself illegal.

A perusal of the averments made in the complaint in no manner can lead to a conclusion that there is a factual allegation that there was deception or intention on the part of the signatories to the deed to cheat the Complainant or any other person or that the intention of cheating was clear from the facts, even prior to the accused persons entering into the transaction. Even though vague allegations are made in the complaint that the property was sold at a value lower than its market value, there is no imputation in the complaint that any of the signatories on behalf of the

Society, who executed the deed, had benefited from such lower market value being recorded. The sale deed in question is a registered document and carries with it all presumptions as to the market value of the land. It is nobody's case in the complaint that the value of the property has not passed from the purchaser to the vendor Society.

Further, one fails to understand how any dishonest intention or intention to commit an act of cheating can be attributed to the accused Sagar Ratan, who has only signed on behalf of the purchaser Company and its Director.

25. Even assuming for a moment that the Executive Committee Members of the Society who had signed the deed had done so beyond the powers vested in them by resolutions of the Society, this would essentially be a civil dispute or rather a co-operative dispute as to the power vested in the signatories on behalf of the Society, and whether they had exceeded the powers vested in them under the resolution. In fact, this is a dispute that has been raised and is pending before the concerned Co-operative Court, as referred to by us in the preceding paragraphs.

We further take note of the judgment of this Court dated 12.12.2018 in WP 7007/2017, which examines the legality of the order dated 07.08.2017 of the Sub-Divisional Officer acting under the Land Revenue Code and recalling the mutation entry in favour of the purchaser Company. In that judgment, reference is made to the very same facts which are contained in the present complaint, that is, the allegation that the Society could not have executed the sale deed in respect of the concerned lands as the land was already demarcated into plots which had been purchased by registered documents by various purchasers. There is further reference made in that judgment to the fact that there was a pending co-operative dispute in respect of earlier sale deeds made of plots covering the same property which is subject matter of the sale, in these complaints, on the basis of which the Complainants now claim that the entire transaction could not be made.

26. A perusal of this Court's order in the Writ Petition specifically refers to the earlier pending co-operative disputes which were pending and in which a relief was sought from the Co-operative Court to hold the transaction of sale in favour of the Society to be illegal. In this judgment, this Court also recorded an undertaking from the purchaser Company who has purchased the property from the Society vide sale deed dated 31.03.2017, that it would not make any development in the property or undertake any construction thereon for a period of two months from the date of the order of the Court.

27. Thus, upon assessing all the above facts and the averments contained in the complaint, it can certainly not be concluded that the Petitioners have deceptively or intentionally sold/purchased the property in any manner that could be considered to contain the ingredients of "cheating" under Section 420 IPC. At best, the transaction will require to be tested in the pending co-operative dispute or before a Civil Court through evidence, to ascertain the two main civil/contractual issues that arise, the first being whether the Society itself had a right to the property and had ownership of the same, and could transfer the property to the purchaser Company, and the second being whether the Executive Committee and signatories to the deed were sufficiently empowered to negotiate and execute the sale on behalf of the Society. Both issues would be really a question of civil nature to be determined by appropriate Civil or Co-operative Court; thus the allegations in the complaint, even if taken at face value would not constitute an offence of cheating.

28. As laid down by the Hon'ble Supreme Court, in cases of the present nature, this Court is not precluded from, and must take cognizance of the background proceedings on facts that have led to the filing of the complaint. Amongst those facts, one has to consider the fact that there was a prior complaint dated 15.02.2010, of the affairs of the Society and that the property was yet to be converted into non-agricultural purpose, and an application by the Society before the Competent Authority under Urban Land Ceiling Act was pending. That the Respondent No.3 claims to be the son of the earlier Secretary of the Society who had unauthorisedly and illegally entered into a sale transaction, which the Society claims not to be binding on it. The complainant alleged that he had lodged the complaint on 13.07.2008 before Hingana Police Station with regard to this transaction, and that the same was treated as a non-cognizable complaint. That later in the year 2009, a civil suit came to be filed by one Uttam Pawar along with some other persons against the Society alleging that the Society was attempting to sell the property; that suit was dismissed holding the dispute to be a co-operative dispute and the same was pending before the Co-operative Court. The further fact in the complaint alleges that a resolution was passed in the General Body Meeting of the Society in the year 2013 to sell this land to any prospective purchaser and powers were given to the Petitioner No.1 Sandip Jaini, by the Society to sell the property. After the sale deed was executed, the same Uttam Pawar at whose behest a co-operative dispute is pending, lodged a similar criminal complaint bearing Crime No.405/2016 under Section 448 and 427 IPC which has been challenged by the first accused before this Court in WP 765/2017 which is pending.

It is only after the SDO recalled the order of mutation of the sale deed, on 07.08.2017, that the present complaint was filed on 22.08.2017 at the behest of the Respondent No.4. Taking note of the chronology of the above facts, we are further of the opinion that the present complaint appears to be motivated and the intention of bringing some kind of the pressure to bear on the Petitioners to settle scores and to act as further pressure on the Petitioners after obtaining the order dated 07.08.2017 recalling the mutation in favour of the Complainant.

29. This brings us to the second part of the first issue as to whether ingredients of offences punishable under Sections 467, 468, 471 and 474 IPC are prima facie made out. Sections 467, 468, 471 and 474 essentially require that the complaint should contain allegations against the accused of making a false document with an intention to cause damage or injury to any person or to cause a person to part with the property or with the intent to commit fraud. The act of forgery, under Section 468 should be with the intention that the document would be used for the purpose of cheating and under Section 471, using such a forged document, portraying it to be genuine, is an offence. Under section 474 IPC, the possession of a document, which the possessor has knowledge that the same is forged is also an offence. All these offences relate to a document which is forged; thus, for a document to be a product of forging, the same is required to be false document, made by the accused with the intent to cause injury to the public or any person or cause the property of such person harm.

In the present case, the first part of the allegation in the complaint relates to a document purporting to sell the concerned property to the Society, even though part of that property was earlier sold as plots to multiple persons. It is not the allegation of the complaint that the accused persons have entered into this transaction, as the only transaction that the accused have entered into is the sale deed of 31.03.2017 which is a registered document. Thus, we can safely conclude that the first part of the allegation of the complaint cannot be construed as an act of forgery committed by these accused. Examining the allegations made on the second part of the complaint, no part of the complaint alleges in substance, that the document sale from the Society to the Company is a forgery or with the intent to commit fraud. The substance of the allegation appears to be that the persons executing the deed were not vested with the power to execute the same. Thus, on the face of the complaint, no offence of forgery has been made out and consequently, ingredients of offence punishable under Sections 467, 468, 471 and 474 IPC are prima facie not made out.

30. <u>Whether execution and registration of sale deed dated 31.03.2017 amounts to an offence of cheating and forgery?</u>

After having referred to the facts stated in the complaint, and adverting to the discussions in the case law requiring the facts in the complaint to make out a "dishonest intention" on the part of the accused, as a precondition for prima facie, establishing the commission of the offence of cheating, merely executing and registration of the deed of sale dated 31.03.2017 would not amount to an offence of cheating and forgery.

Even if the allegation in the complaint, at this stage were to be interpreted to mean that the accused persons had knowledge that the Deputy Registrar of Co-operative Societies had, by its order dated 31.03.2017, appointed an interim administrator to run the affairs of the Society, the facts now brought on record through Criminal Application No.114/23 which we have allowed, bears out in the reply under RTI that there was no acknowledgement receipt in the records of the Deputy Registrar of service of this order on the accused persons.

This being the factual position, it becomes further clear that the accused had no knowledge of the order of appointment of an Administrator when the executing of the deed of sale before the Sub Registrar and certainly the accused Sagar Ratan who signed for the purchaser Company could not have been charged with the knowledge that there was any embargo on the signatories to the deed from executing the same. In any event, this will all be within the realm of a civil dispute to be decided either before the Co-operative Authorities or in a civil suit, raising a challenge to the competence of the Executive Committee to execute the deed. Thus, the key ingredients of having a dishonest or fraudulent intent, as is required under the various offences alleged in this case, not having been made out, this would be a suitable case necessitating our intervention to thwart the abuse of the process of Court.

31. Whether the dispute is of civil nature and is liable to be quashed?

Our discussion on the various ingredients of the offences alleged about leave no doubt that the present complaint, if taken at face value, partakes the colour of a civil dispute, in the facts of this case, we have our doubts whether the Complainant would have the locus to throw a challenge to the legality of the deed of sale, either as being a forged document vitiated by fraud or a document which is the product of cheating. In any event, the question as to whether the document itself is false and a product of forgery could be decided by appropriate evidence in a civil forum, as that would be the normal course to be followed for deciding the rights of the parties and the civil effects of the documents in question. Any criminal proceeding to decide whether the document is forged or fraudulent or a product of cheating would necessarily overlap with civil proceedings, two of which are already pending in Co-operative Courts.

As held by the Supreme Court in various of its judgments referred above, there appears to be a growing tendency of complainants attempting to give the cloak of criminal offence to matters which are essentially of civil nature either to apply pressure on the accused or settle scores with them due to business exigencies. We believe that this is one such case, as borne out from the facts and discussion set out above.

32. We hereby allow Criminal Writ Petition No.800/2017 and Criminal Application (APL) No.345/2019 and accordingly hold that the complaint, prima facie does not disclose the commission of offences against the Petitioners/Applicant under Sections 120B, 420, 465, 467, 468, 471, 474 and 36 IPC. Accordingly, we proceed to quash and set aside First Information Report No. 0518/17 dated 23/08/2017 registered at Hudkeshwar Police Station, Nagpur under Section 120B, 420, 465, 467, 468, 471, 474 and 36 IPC along with the connected Final Report / Charge Sheet dated 18/11/2019 bearing No. 164/2019 pending before the Sessions Court, Nagpur against the Petitioners in Criminal Writ Petition No.800/2017 and Applicant in Criminal Application (APL) No.345/2019.

Leave is granted to the Complainant/Respondent to institute a fresh criminal proceeding on this subject matter after consideration of the decision in the connected Civil Suits/Co-operative disputes which are pending adjudication.

VALMIKI SA MENEZES, J. **VINAY JOSHI, J.**