

Reserved On : 13/08/2025

Pronounced On : 08/09/2025

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE  
FIR/ORDER) NO. 12202 of 2012**

With

**R/CRIMINAL MISC.APPLICATION NO. 16100 of 2012**

With

**R/SPECIAL CRIMINAL APPLICATION NO. 2744 of 2013**

With

**R/SPECIAL CRIMINAL APPLICATION NO. 3647 of 2013****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J. C. DOSHI**

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|                        |     |    |
|------------------------|-----|----|
| Approved for Reporting | Yes | No |
|                        |     |    |

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**MAHENDRABHAI DEVSINH DESAI & ORS.**

Versus

**STATE OF GUJARAT**

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Appearance:

**CRMA 12202 OF 2012**

MR VISHAL K ANANDJIWALA for the Petitioners

MR HRIDAY BUCH for MR. JAY M THAKKAR for Respondent - Complainant

**CRMA 16100 OF 2012**

MR IM PANDYA for the Petitioner

MR HRIDAY BUCH for MR. JAY M THAKKAR for Respondent – Complainant

**SCRA 2744 OF 2013**MR JAYANT PANCHAL, SR. ADVOCATE with MS AMRITA AJMERA for the  
Petitioner

MR HRIDAY BUCH for MR. JAY M THAKKAR for Respondent – Complainant

**SCRA 3647 OF 2013**

MR HRIDAY BUCH for MR. JAY M THAKKAR for the Petitioner

NOTICE SERVED 11,4,9

MR PANKAJ A KAPADIA for Respondent No.10  
MR JAYANT PANCHAL, SR. ADVOCATE with MS AMRITA AJMERA for  
Respondent Nos.3 & 5  
MR AFTABHUSEN ANSARI for Respondent No.2  
MR KARAN U VYAS for Respondent No.6  
MR VISHAL K ANANDJIWALA for Respondent Nos.7 & 8  
MR CHINTAN DAVE, ADDL. PUBLIC PROSECUTOR for the Respondent  
State in all the matters

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

### CAV JUDGMENT

1. I proposed to decide captioned petitions by this common judgment and order, as they are pertaining to selfsame FIR having involved similar issue.

2. In Criminal Misc. Application No.12202 of 2012 filed u/s 482 of the Code of Criminal Procedure, 1973, the petitioners claimed following relief:-

*a. call for the record and proceedings of court of Criminal Case No.62/2012 of the court of JMFC, Patdi and examine the same;*

*b. quash and set aside the order passed by the learned J.M.F.C. Patdi, dated 05/06/2012 below Exh. 56 in Criminal Case No.62/2012. Exh. 56;*

*c. allow Exh.56 preferred by the accused-applicants Criminal seeking discharge in Special Case No. 62/2012 pending in the Court of Ld. JMFC, Patdi and discharge the accused revisionists;*

*d. pending admission and/or final disposal of this application, further proceedings of Criminal Case No.62/2012 pending in the Court of Ld. JMFC, Patdi, be stayed;"*

The petitioners of aforesaid petition are arraigned as accused Nos.1 to 3 in the FIR and accused Nos.5 to 7 in the charge sheet.

2.1 In Criminal Misc. Application No.16100 of 2012 filed u/s 482 of the Code of Criminal Procedure, 1973, the petitioner claimed following relief:-

*“a. Call for the record and proceedings of Court of Criminal Case No. 62 of 2012 of the Court of learned Judicial Magistrate First Class, Patdi and be further pleased to allow discharge application.*

*b. Quash and set aside the impugned order passed on 23rd October 2012 by the learned Additional Sessions Judge, Dhangadhra in Criminal Revision Application No. 12 of 2012.*

*c. Pending admission and final disposal of this application, further proceedings of Criminal Case NO. 62 of 2012 pending in the court of learned Judicial Magistrate, Patdi, be stayed.”*

The petitioner of aforesaid petition is arraigned as accused No.5 in the FIR and accused No.9 in the charge sheet.

2.2 In Special Criminal Application No.2744 of 2013 filed under Article 226 of the Constitution of India r/w section 239 of the Code of Criminal Procedure, 1973, the petitioner claimed following relief:-

*b. Be pleased to quash and set aside the FIR lodged with Patdi Police station being CR No.I 0039/2010 as well as consequential proceedings arising out of the said complaint qua the present petitioner.*

*c. Be pleased to quash and set aside order passed by the Ld. Additional Sessions Judge, Dhangadhra dated 29.06.2013 in Criminal Revision Application no. 16 of 2012 and the order passed below Exh. 54 in Criminal Case No. 62 of 2012;*

*d. Be pleased to allow Exh. 54 preferred by the accused applicant seeking discharge in Criminal Case No. 62 of 2012 pending in the court of Ld. JMFC, Patdi;*

The aforesaid petitioner is not named in the FIR, however, arraigned as accused No.3 in the charge sheet.

2.3 In Special Criminal Application No.3647 of 2013 filed under Article 226 of the Constitution of India r/w section 482 of the Code of Criminal Procedure, 1973, the petitioner claimed following relief:-

*a. to transfer the investigation to CBI or any other higher police agency of CID Crime, in connection with the FIR registered with Patdi Police Station, District: Surendranagar at I. C.R.No. 39/2010;*

*b. to direct the investigation agency to add section 302 of Indian Penal Code for the Murder of Kirit kanjibhai Thakker and to investigate in the crime and file supplementary Charge sheet within stipulated time.*

*c. pending admission, hearing and final disposal of this petition, Your Lordship may be pleased to direct the present investigating agency, i.e. CID (Crime and Railways) to submit the report of investigation carried out by it, before this Hon'ble High Court;*

In aforesaid petition, petitioner is first informant.

3. With the consent of learned advocates for the parties For the sake of bravery and convenience, Criminal Misc. Application No. 12202 of 2012 is treated to be lead matter and facts essential for determination of the aforesaid petitions can be stated thus:-

**BRIEF FACTS OF THE CASE:-**

3.1 The first informant is a resident of Ahmedabad. His native place is village: Saulas, Ta: Patdi, Dist: Surendranagar. The first informant had elder brother, named, Kanjibhai who has passed away in 2002. Kanjibhai is survived by two sons, namely, Rameshbhai and Kiritbhai, both residing at Savlas and are agriculturists. The first informant owns agricultural land situate at village Saulas bearing S.No.368, 369 and 370. Rameshbhai and Kiritbhai -sons of Kanjibhai Ambarambhai are the owners of Revenue SurveyNo.371, 372 and 155/1. Third brother of the first informant Bharatbhai Ambarambhai agricultural land at village bearing SurveyNo .416 all are situated at village Savlas, Tal: Patdi, Dist: Surendranagar (in short "the land in dispute").

3.2 The entire family used to avail of loan facility from State Bank of India, Patdi branch by mortgaging the crop and for this purpose, they had visited the bank on 30/11/2009. They learnt that the entire loan amount has been paid-up and the bank has also issued No Due Certificate in this regard. The first informant was surprised to learn as to how the entire loan amount has been paid-up. The first informant thereafter

visited Office of the Sub-Registrar, Patadi and learnt that on 7/10/2009, four Registered Sale Deeds have been executed bearing Registration No. 1260/2009 to 1263/2009 by one Hitesh Prabhubhai Thakker - a resident of Ahmedabad in favour of the petitioners herein as Power of Attorney holder of the first informant and other family members.

3.3 The first informant further learnt that one Hitesh Prabhubhai Thakker created three bogus and forged Power of Attorney dated 25/9/2009 in his favour and got them notarized through one Advocate C.U.Shelat - petitioner of Criminal Misc. Application No.16100 of 2012 and identified by Mr.Parmar, Advocate at Ahmedabad.

3.4 The first informant thereafter immediately instituted four Civil Suits in the Court of Principal Civil Judge, Patadi, bearing Civil Suit No.81/2009, 82/2009, 83/2009 and 84/2009 for cancellation of the Sale Deeds, which are still pending in the Court of Civil Judge.

3.5 The master mind behind this fraud is one Yasinsha Motisha Fakir resident of Salvas. That when the first informant reached Police Station to lodge report, Yasinsha came over there and threatened the first informant. Yasinsha pressurized the first informant to settle the dispute otherwise he would kidnap one of the family members of the first informant.

3.6 That thereafter from 9/10/2009 elder son of his

Late brother Kanjibhai, named, Kiritkumar has not come home and his whereabouts are not known. In this manner the accused persons, in collusion with each other, hatched a criminal conspiracy and have committed the offences enumerated above.

3.7 After the filing of the FIR being I- C.R. No.39 of 2010, investigation was carried out and chargesheet was filed.

3.8 Accused petitioners herein are the bonafide purchasers of the properties in question and were shocked to learn about the registration of the FIR and the fraud played upon by the Power of Attorney holder Hitesh Prabhubhai Thakker. The accused petitioners, apprehending arrest at the hands of police, applied for anticipatory bail before this Hon'ble Court by preferring Criminal Misc. Application No.8297/2010 and No.8301/2010. The said applications were allowed by this Hon'ble Court (Coram: Hon'ble Mr.Justice Z.K.Saiyed) by an order dated 02/08/2010.

3.9 After the filing of chargehseet, the present petitioners preferred Criminal Misc. Application no.1431/2011 quashing of the FIR. The said application was withdrawn with the liberty to present appropriate application before the Ld. Trial Court for discharge for the reasons that the charge sheet was filed. Subsequently, the present petitioners preferred discharge application under section 239 of the Code vide Exh.56 before the Court of JMFC, Patdi, the said application was rejected by Ld. JMFC, vide order dated 05/06/2012.

3.10 Hence, Criminal Misc. Application No.12202 of 2012 is filed.

3.11 Since the petitioner of Criminal Misc. Application No.16100 of 2012 is arraigned as accused in the impugned FIR, application Exh.16 was preferred by the petitioner for discharge u/s 239 of the Code before the learned JMFC, Patdi. However, the learned JMFC has rejected said application on 5.6.2012. Being aggrieved by the order passed below Exh.16, the petitioner preferred Criminal Revision Application before the learned Sessions Court, which also came to be dismissed vide judgment and order dated 23.10.2012. Hence, Criminal Misc. Application No.16100 of 2012 is filed.

3.12 Since the petitioner of Special Criminal Application No.2744 of 2013 is arraigned as accused in the impugned FIR, petitioner has preferred an application Exh.54 before the learned trial court under section 239 of the Code seeking discharge from the accusation. By order dated 5th June 2012, the learned trial court rejected the discharge application. The petitioner being aggrieved and dissatisfied by the order of declining discharge, preferred Criminal Revision Application No.16 of 2012 before the learned sessions Court, however, the learned sessions court has confirmed the finding of the learned trial court and rejected the application. Hence, Special Criminal Application No.2744 of 2013 is filed.

3.13 Since the petitioner of Special Criminal Application

No.3647 of 2013 felt that the investigation is not properly carried out by the investigating officer and as one Mr. Kirit Thakker is missing and alleged to have been murdered by the original accused, Special Criminal Application No.3647 of 2013 is filed to transfer the investigation to CBI or any other higher police agency of CID Crime in connection with the impugned FIR i.e. FIR registered with Patdi Police Station, District: Surendranagar at I. C.R.No. 39/2010 and to direct the investigation agency to add section 302 of Indian Penal Code for the Murder of Kirit kanjibhai Thakker.

4. In essence, what appears that Criminal Misc. Application Nos.12202 of 2012, 16100 of 2012 and Special Criminal Application No.2744 of 2013 challenge order passed by the learned trial Court (in some of the matters, confirmed by the learned Sessions Court), declining to discharge the accused from the charges levelled in the charge sheet. Special Criminal Application No.3647 of 2013 is filed by the petitioner (complainant in all the aforestated matters) to transfer the investigation to CBI and to add the offence u/s 302 of the IPC in the charge sheet.

5. Qua Criminal Misc. Application No.12202 of 2012, I have heard learned advocate Mr. VK Anandjiwala for the petitioners, qua Criminal Misc. Application No.16100 of 2012, I have heard learned advocate Mr. IM Pandya for the petitioner, qua Special Criminal Application No.2744 of 2013, I have heard learned Senior counsel Mr. JM Panchal assisted by learned advocate Ms. Amrita Ajmera for the petitioner and

qua Special Criminal Application No.3647 of 2013, I have heard learned advocate Mr. Hriday Buch along with learned advocate Mr. Jay Thakker for the petitioner and complainant in rest of the matter. I have also heard learned APP Mr. Chintan Dave appearing for the respondent State.

**SUBMISSIONS OF THE PETITIONERS OF CRMA 12202 OF 2012:-**

6. Learned advocate, Mr. Anandjiwala for the petitioners mainly argue that the petitioners are *bona fide* purchasers with value without notice. He would further submit that according to the FIR, four sale deeds of the land in disputes are executed based upon four different power of attorney alleged to have been executed in favour of one Mr. Hitesh Thakker, who is not in existence. He would further submit that, according to the FIR, one Muhammad Tahir has impersonated and pretended as Hitesh Thakker and the power of attorney were created. He would further submit that in the FIR as well as in the charge sheet, it is alleged that the petitioners have committed offences as stated herein above. However, since the present petitioners are the *bona fide* purchasers with value, it cannot be said that they have participated in the alleged offence. He would further submit that it is not an allegation of the complainant that the petitioners have forged power of attorney and forged sale deed or actively participated to take away the immovable properties belongs to the complainant.

6.1 It is argued that in the FIR as well as in the charge sheet, the allegations mainly are levelled against accused Yasinsha Fakir. He is the kingpin according to the FIR and charge sheet. The business of the petitioners is to purchase and sell the land. Yasinsha Fakir and accused advocate Deepak Mandali - petitioner of Special Criminal Application No.2744 of 2013 came to the petitioners along with one Mr. Kirit Thakker and started negotiation about selling of the land. The petitioners having in business of selling and purchasing of the lands, after taking into consideration fact that power of attorney are executed in favour of one Mr. Hitesh Thakker, decided to purchase land in dispute and executed registered sale deed for the land in dispute. He would further submit that the Sub Registrar Office has also registered sale deed after paying heed to the provisions of the Registration Act. The petitioners have paid the sale consideration, which is also reflected from the material collected during investigation. In that circumstances, he would submit that the petitioners have not committed any offence of forging power of attorney or sale deed and used as genuine, as alleged in the FIR.

6.2 As far as offence under sections 365, 344 and 419 of the IPC is concerned, learned advocate Mr. Anandjiwala would submit that the FIR as well as the charge sheet are even if treated as gospel truth, no allegations or even whisper of words are stated against the petitioners. He would further submit that the alleged incident took place on 25<sup>th</sup> September 2009 and the FIR of which has been lodged on 4<sup>th</sup> June 2010.

Prior to filing of the FIR, the complainant has filed RTS proceedings and the suit for cancellation of the sale deed. He would further submit that the FIR therefore is filed with an oblique motive to pressurize the petitioners to reverse the sale deed. In the aforesaid argument, learned advocate, Mr. Anandjiwala took this court through the impugned order passed a below Exh.56 application preferred under section 239 of the Code to discharge the petitioners from the accusation. He would submit that the learned JMFC, Patdi did not consider all these aspects in its totality and circle around the point that the petitioners have conspired with other accused to take away the land of the complainant by forging the power of attorney. He would further submit that the learned trial court, though, at the stage of deciding application seeking discharge of the accused, may not make in-depth inquiry into the allegations levelled against the accused, but is required to sift and weigh material collected during the investigation and placed along with the charge sheet in limited scale believing it to be true and to compare the role of the petitioners in the commission of the offence. He would further submit that even for namesake, there is no allegation against the petitioners that they have forged the power of attorney or have they played active role in forging the power of attorney to take away the land of the complainant. The transaction carried by the petitioner was in good faith. The learned trial court while deciding the discharge plea of the accused was required to see that whether the petitioners are the *bona fide* purchasers of the land in dispute or otherwise, but the learned trial Court. He

would further submit that the learned trial court committed gross and serious error in rejecting the discharge application. He would further submit that the FIR and all consequential proceedings are pure abuse of process of law, as far as present petitioners are concerned, who are *bona fide* purchasers of the land in dispute.

6.3 Upon above submissions, learned advocate Mr. Anandjiwala requests to allow Criminal Misc. Application No.12202 of 2012 and to quash and set aside the order passed by the learned JMFC below application Exh.56 and to discharge the petitioners from the accusation made in the charge sheet.

### **SUBMISSIONS OF THE PETITIONER OF CRMA 16100 OF 2012:-**

7. Learned advocate Mr. IM Pandya appearing for the petitioner in Criminal Misc. Application No.16100 of 2012 would submit that the petitioner is a notary and practicing as notary public. He would further submit that as per the allegations made in the FIR, the petitioner executed power of attorney alleged to be fraudulent document, in exercise as notary public. He would further submit that allegation levelled against the petitioner is covered under the Notaries Act. He would further submit that section 13 of the Notaries Act provides that no court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under the Act save upon complaint in writing

made by an officer authorised by the Central Government or a State Government by general or special order in this behalf. He would further submit that thus, the learned trial Court is not entitled to take cognizance against notary for the act he has done during discharging his duty as notary. He would further submit that application Exh.16 was preferred u/s 239 of the Code before the learned JMFC, Patdi mainly on the aforesaid ground. However, the learned JMFC has rejected said application on 5.6.2012. Being aggrieved by the order passed below Exh.16, the petitioner preferred Criminal Revision Application before the learned Sessions Court, which also came to be dismissed vide judgment and order dated 23.10.2012. He would further submit that the learned Courts below have totally missed to read section 13 of the Notaries Act and its legal implications. He would further submit that the learned Courts below have erred in believing that the petitioner is one of the conspirators and knowing fully well about non-existence of person like Hitesh Thakker and yet, registered the power of attorney. He would further submit that according to the allegation levelled in the FIR, one Mr. Muhammad Tahir remained present as Hitesh Thakker while power of attorney was registered before the petitioner - notary public. But, it was never within the knowledge of the petitioner that Mr. Tahir Muhammad has impersonated Mr. Hitesh Thakker. Lest, the petitioner would not do any act to notarize the power of attorney. However, what alleges in the FIR as well as in the charge sheet are nothing beyond the act done by the notary under the Notaries Act. He would further submit that section 13 of the Notaries Act prevent Court from

taking cognizance of any offence committed by a notary in purported exercise of his function under the Notaries Act. He would further submit that in the present case, since no complaint has been filed against the petitioner, no Court can take cognizance, yet the learned Courts below erred in taking cognizance and therefore, both the learned Courts below committed gross error.

7.1 Learned advocate Mr. IM Pandya referred to the judgment of the Coordinate Bench of this Court in case of Jeetendrasinh Gohil Vs. State of Gujarat and another rendered in Criminal Misc. Application No.1955 of 2016 as well as in case of Ashokbhai Ghantivala Vs. State of Gujarat and another, 2009(2) GLH 491.

7.2 Upon such submission, learned advocate Mr. IM Pandya requests to allow Criminal Misc. Application No.16100 of 2012 and further requests the Court to discharge the petitioner from the accusation levelled in the charge sheet.

### **SUBMISSIONS OF THE PETITIONER OF SCRA 2744 OF 2013:-**

8. So far as Special Criminal Application No. 2744 of 2013 is concerned, learned Senior Advocate, Mr. JM Panchal assisted by learned advocate Ms. Amrita Ajmera limits the role of the petitioner Deepak Mandli to the extent that the petitioner being a practicing lawyer, under the instructions of the seller and purchaser of the disputed property, purchased

stamp papers, prepared draft of sale deed and after obtaining the note on draft sale deed of both the parties, got it engrossed on the stamp paper purchased by him and subsequently facilitated the parties to register the sale deed before the office of the Sub Registrar. Apart from that, he has not committed any other act nor functioned in any other way, which demonstrate that the petitioner was one of the conspirators in commission of the offence. Learned Senior Advocate while taking exception to the argument of learned advocate Mr. Ananjiwala appearing for the petitioner of Criminal Misc. Application No.12202 of 2012 would submit that it is incorrect to say that the petitioner went with Mr. Yasinsha Fakir along with Kirit Thakker and met the petitioner and told that the owner of the disputed parcels of land intended to sell them. He would further submit that the role of the petitioner is limited to purchase of stamp papers, prepared draft sale deed and got it registered in the Sub Registrar office. Apart from that, no other role has been played by the petitioner. He would further submit that the petitioner has preferred an application Exh.54 before the learned trial court under section 239 of the Code seeking discharge from the accusation. By order dated 5th June 2012, the learned trial court rejected the discharge application. The petitioner being aggrieved and dissatisfied by the order of declining discharge, preferred Criminal Revision Application No.16 of 2012 before the learned sessions Court, however, the learned sessions court has confirmed the finding of the learned trial court and rejected the application and hence the petitioner has approached this Court. Learned Senior

Advocate, in wake of above arguments, would submit that the petitioner is neither beneficiary of the alleged transaction nor has gained anything nor has functioned anything. Even no allegation is made that he has played any active part in forging the power of attorney, which is a base and root of the entire scam. In the aforesaid circumstances, the petitioner should not be sent for facing the trial. He would further submit that the learned trial court did not consider the allegation made against the petitioner vis-a-vis the role played by the petitioner in alleged commission of offence and did not disclose that whether any ground or any strong suspicion exists against the petitioner to proceed to frame the charge.

8.1 In the aforesaid circumstances, learned Senior Advocate would request to allow Criminal Misc. Application No.2744 of 2013 and to overturn the impugned orders passed by the learned courts below and to discharge the petitioner from accusation.

### **SUBMISSIONS OF THE RESPONDENT - ORIGINAL COMPLAINANT:-**

9. As against aforesaid submission, learned advocate Mr. Hriday Buch along with learned advocate Mr. Jay Thakker appearing for the respondent - original complainant took this court through the entire factual aspects and submitted that in total, there was 34 acre of land, which consists seven parcels of land belonging to three brothers, namely Shantilal, Kanjibhai and Bharatbai. Kanjibhai since expired and survived

by Lalitaben, Kiritbhai and Jyotsnaben. He would further submit that credit loan was obtained by the three brothers on the aforesaid land, but subsequently, it came to their knowledge that on 30th November 2009, someone has paid the credit loan. He would further submit that when the complainant approached to the Sub-Registrar office, he came to know that upon bogus and forged power of attorney, sale deeds for all the parcels of land were executed on 7.10.2019. He would further submit that when the complainant inquired from the office of the Sub Registrar, Patdi, he came to know that three power of attorney were executed on 25.9.2009 in name of Hitesh Thakker being the power of attorney holder through him, seven parcels of land were sold in favour of the petitioners of Criminal Misc. Application No.12202 of 2012 by executing registered sale deed on 7<sup>th</sup> October 2009. He would further submit that without issuing notice under section 135D of the Land Revenue Code, mutation entry was posted on next day and came to be approved and confirmed on 1<sup>st</sup> December 2009. He would further submit that since upon inquiry, the complainant found that their land have been grabbed by creating forged power of attorney, which resulted into the stale sale deed, he immediately filed Special Civil Suit Nos. 81 of 2009 to 84 of 2009 before the learned trial court to save their land.

9.1 Putting the case in sequence, learned advocate Mr. Buch would submit that Kiritbhai - son of Kanjibhai went missing from 9<sup>th</sup> October 2009 i.e. from next to next day of executing the stale sale seed and till date, Kiritbhai has not

been traced out by the investigating officer, who was last seen together with Yasinsha Fakir. He would further submit that the complainant has run from post to pillar to register the FIR and yet he could not yield the result till 4<sup>th</sup> June 2010, as accused are mighty. Learned advocate, Mr Buch, in the facts of the case, would submit that during the investigation, police has recorded statement of one Mr. Dalsukhhai and in that statement, witness Dalsukhbhai stated that he entered into the transaction with the petitioners of Criminal Misc. Application No.12202 of 2012 for other parcels of land previous to the disputed transactions, which indicates and demonstrates that the petitioners were knowing the family of late Ambalal Thakker, who was survived by five brothers, Shantilal, Kanjibhai, Dalsukhbhai, Bhailalbhai and Bharatbhai. Kanjibhai expired leaving behind his heirs.

9.2            Learned advocate Mr. Buch having taken this court through the investigation and material collected during the investigation, would submit that nephew of Kiritbhai was in financial crunch and therefore he has borrowed money from some third party. Kiritbhai, who is now missing, was keen to see that the amount borrowed by his nephew to be paid back. This fact was come to the knowledge of the mastermind of the entire offence Yasinsha Fakir. He took Kiritbhai to the petitioners of Criminal Misc. Application No.12202 of 2012 and then the entire scam was designed. He would further submit that it was within the knowledge of the petitioners of Criminal Misc. Application No.12202 of 2012 that mastermind Yasinsha Fakir, who was a history sheeter and had undergone

life imprisonment for the offence of murder, designed the entire offence and created more than one power of attorney in name of Hitesh Thakker to give the colour that person from Thakker family has been given power of attorney and he has executed sale deed. However, person like Hitesh Thakker is not in existence and Mr. Muhammad Tahir was placed as Hitesh Thakker and the power of attorney were got executed and upon such power of attorney, registered sale deeds got executed to take away seven parcels of land belonging to Thakker family. He would further submit that Desai family, who is the petitioners of Criminal Misc. Application No.12202 of 2012 were in knowledge of the entire facts since the beginning, which indicates their role as conspirators.

9.3 Learned advocate Mr. Buch would further submit that as far as role of accused Mr. Deepak Mandli is concerned, said person has played role of middleman and his role is not innocuous as argued. He would further submit that in fact, he along with mastermind Yasinsha Fakir played active role in commission of the offence. He would further submit that Mr. Deepak Mandli, practicing lawyer was knowing that no person like Mr. Hitesh Thakker exist, as also knowing that Mr. Tahir Muhammad had impersonated Mr. Hitesh Thakker. Yet, upon forged power of attorney, facilitated registration of sale deed to take away several parcels of land belongs to Thakker family. Prima facie, such purported exercise of petitioner established that he has played equal role in conspiring entire scam.

9.4 Learned advocate Mr. Buch would further submit that as far as role of petitioner Chandrakant Shelat of Criminal Misc. Application No,16100 of 2012 is concerned, the order of the learned trial Court itself is clear where it demonstrates that one Mr. Parmar had been paid Rs.200/- by petitioner Mr. Chandrakant Shelat to give identification of Hitesh Thakker - a person who never exists. In other words, he would submit that petitioner Chandrakant Shelat gave Rs.200/- to Mr. Parmar and directed him that person Muhammad Tahir be identified as Hitesh Thakker.

9.5 In aforementioned submission, learned advocate Mr. Buch would submit that the learned trial Court has comprehensively discussed the issue while declining to discharge the petitioners and in some of the matters, challenges were made to the learned Sessions Court, who in turn, confirmed the findings of the learned trial Court by passing well reasoned order. Thus, he would submit that since petitions of accused are arid of merits, may not be entertained.

#### **SUBMISSION OF THE PETITIONER OF SCRA 3647 OF 2013:-**

10. As far as petitioner Shantilal Thakker of Special Criminal Application No.3647 of 2013 is concerned, learned advocate Mr. Buch fairly submitted that relief claimed in the petition is now not surviving as offence u/s 365, 344, 419 of the IPC has already been added in the FIR and investigation is completed

and charge sheet is also filed and therefore, he submits to pass necessary orders qua said petition.

### **SUBMISSIONS OF THE APP:-**

11. Joining the arguments of learned advocate Mr. Buch, learned APP Mr. Chintan Dave referring to the judgment in case of **Dharambeer Kumar Singh v. State of Jharkhand, (2025) 1 SCC 392** as well as in case of **CBI v. Aryan Singh, (2023) 18 SCC 399** would submit that while exercising jurisdiction u/s 482 of the Code, the Court cannot hold mini trial and appreciate the evidence at the stage of quashing the petition. He would further submit that in other words, this Court at the stage of framing the charge or at the stage of quashing the petition, is legally prevented from holding mini trial considering the defence of the accused and to decide the issue. He would further submit that the FSL report carried upon disputed power of attorney indicates that none of the members of Thakker family has signed on it. He would further submit that aptly, the original power of attorney has been obtained from the possession of Desai family - petitioners of Criminal Misc. Application No.12202 of 2012. He would further submit that the investigation has been carried out *in extenso* and offence of abduction was also lodged as Kiritbhai is missing from the 3<sup>rd</sup> day of the execution of the registered sale deed and yet not been traced out. He would further submit that neither the purchaser nor advocate or notary are innocent, that they are conspirators in taking away land of Thakker family. Learned APP submits that

material collected during investigation and placed along with charge sheet demonstrates that none of them have played any innocuous role as argued.

12. Upon such submission, learned APP prays that this Court may not interfere with the impugned orders passed by the learned Courts below and further prays to dismiss the petitions.

### **ANALYSIS:-**

13. Having extensively heard the rival submissions of learned advocates for all the parties and perusing the records, what appears that essentially, the order of declining to discharge passed by the learned trial Court is at centre of controversy. The trial of the offence alleged against the accused is warrant trial. Hence, at the outset, I may refer section 239 of the Code, which reads as under:-

*“239. When accused shall be discharged.*

*- If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.*

14. The aforesaid provision provides that learned JMFC, which is hearing the plea of discharge, requires to consider police report and the documents sent with it u/s 173 of the

Code and making such examination, if any, of the accused, if he thinks necessary and after hearing rival parties, if found that charges against the accused are groundless, shall discharge the accused. The stage of this section is prior to framing of the charge u/s 240 of the Code, however, does not have dress rehearsal of the trial to discharge accused. The Court has to prima facie form an opinion that charges levelled in the charge sheet are groundless. If the matter remains in the region of suspicion, it would lead the Court to opine that there is a ground for presuming that the accused has committed an offence. The Court may not proceed to frame the charge, at once *a priori*. The Court is required to discuss or sift and weigh material collected during investigation and placed with charge sheet, in limited scale, to find out that region of suspicion is founded against accused and it is sufficient to put the accused into trial. While dealing with the plea of discharge, the Court accepting the material forwarded in a report filed u/s 173 of the Code, requires to sift the material before it. The material which is placed with the report filed u/s 173 of the Code has to be sifted, may not be meticulous in the sense that Court adorns jurisdiction of the trial in passing the judgment after a full-fledged trial. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to face trial.

15. In **Century Spinning And Manufacturing Company Limited Versus State Of Maharashtra, 1972 (3) SCC 282**, in regards to applicability of section 251A of the Code of

Criminal Procedure, 1898 analogous to the provisions of discharge, in para 16, after reproducing section 251, the Hon'ble Apex Court held as under:-

***“16. We may first dispose of the argument on the meaning and scope of Section 251-A,. Code of Criminal Procedure This section reads :***

*"(1) When, in any case instituted on a Police report, the accused appears or is brought before a Magistrate at the commencement of the trial, such Magistrate shall satisfy himself that the documents referred to in Section 173 have been furnished to the accused, and if he finds that the accused has not been furnished with such documents or any of them, he shall cause them to be so furnished.*

*(2) If, upon consideration of all the documents referred to in Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him.*

*(3) If, upon such documents being considered: such examination, if any being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.*

*(4) The charge shall then be read and explained to the accused and he shall be asked whether he is guilty or claims to be tried.*

*(5) If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion,*

*convict him thereon.*

*(6) If the accused refuses to plead, or does not plead, or claims to be tried the magistrate shall fix a date for the examination of witnesses.*

*(7) On the date so fixed the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution :*

*Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined, or recall any witness for further cross-examination.*

*(8) The accused shall then be called upon to enter upon his defence and produce his evidence: and if the accused puts in any written statement, the Magistrate shall file it with the record.*

*(9) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination or the production of any documents or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing:*

*Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under his section, unless the Magistrate is satisfied that it is necessary for the purpose of justice.*

*(10) The Magistrate may, before summoning any witness on such application under sub-sec. (9), require that his reasonable expenses incurred in attending for the purpose of the trial be deposited in Court.*

*(11) If in any case under this section in which a charge has been framed, the Magistrate finds the accused not guilty he shall record an order of acquittal.*

*(12) Where in any case under this section, the Magistrate does not proceed in accordance with the provisions of Section 349 or Section 562, he shall if he finds the accused guilty, pass sentence upon (him) according to law.*

*(13) In a case where a previous conviction is charged under the provisions of Section 221, sub-sec. (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under sub-sec. (5) or sub-sec. (12), take evidence in respect of the alleged previous conviction, and shall record a finding thereon."*

*Though at the bar of this Court as also in the High Court considerable arguments and discussion centered round this point, in our opinion the construction and meaning of this section so far as relevant for our purpose does not present any difficulty. Under sub-sec. (2), if upon consideration of all the documents referred to in Section 173, Criminal P.C. and examining the accused, if considered necessary by the Magistrate and also after hearing both sides, the Magistrate considers the charge to be groundless, he must discharge the accused. This sub-sec. has to be read along with sub-sec. (3), according to which, if after considering the documents and hearing the accused, the Magistrate thinks that there is ground for presuming that the accused has committed an offence triable under Chapter XXI of the Code within the Magistrate's competence and for which he can punish adequately, he has to frame in writing a charge against the accused. Reading the two subsection together it clearly means that if there is no ground for presuming that the accused has committed an offence, the charges must be considered to be groundless, which is the same thing as saying that*

*there is no ground for framing the charges. This necessarily depends on the facts and circumstances of each case and the Magistrate is entitled and indeed has a duty to consider the entire material referred to in sub-sec. (2). On the view that we have taken, we do not consider it necessary to refer to the various decided cases cited at the bar of this Court or discussed in the Judgement of the High Court."*

16. In State of **Maharashtra and Others V/s. Som Nath Thapa and Others, 1996 4 SCC 659**, this Court held:

*"30. In Antulay case Bhagwati, C.J., opined, after noting the difference in the language of the three pairs of sections, that despite the difference there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of "prima facie" case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, a better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing that offence.*

*31. Let us note the meaning of the word 'presume'. In Black's Law Dictionary it has been defined to mean "to believe or accept upon probable evidence". (emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law 'presume' means "to take as proved until evidence to the contrary is forthcoming", Stroud's Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged." (emphasis supplied). In Law Lexicon by P. Ramanath Aiyer the same quotation finds place at p. 1007 of 1987 Edn.*

*32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that*

*commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."*

17. I may with profit also refer recent judgment of the Hon'ble Apex Court in case of **Kanchan Kumar Versus State Of Bihar, 2022 (9) SCC 577**, wherein the Hon'ble Apex Court again discussed legal provision and precedents u/s 227 of the Code - a provision for discharge in session trial, in para 12 to 15, which reads as under:-

*"12. Legal provision and precedents: Section 227 of the Cr.P.C relating to discharge is as under:*

*"227. Discharge - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."*

*13. The threshold of scrutiny required to adjudicate an application under Section 227 of the Cr.P.C., is to consider the broad probabilities of the case and the total effect of the material on record, including examination of any infirmities appearing in the case. In Prafulla Kumar Samal (supra), it was noted that:*

*"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:*

*(1) That the Judge while considering the*

*question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*

*(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.*

*(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

*(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial." (emphasis supplied)*

**14. In *Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368* the Court cautioned against accepting every document produced by the prosecution on face value, and noted that it was important to sift the evidence produced before the Court. It observed that:**

*"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*

...

(v) *At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*

(vi) *At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case..." (emphasis supplied)*

15. Summarising the principles on discharge under Section 227 of the Cr.P.C, in **Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547** this Court recapitulated:

*"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be*

*founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence." (emphasis supplied)"*

## **FINDINGS:-**

18. In background of the aforesaid provisions of law enumerated, if we perused the orders passed by the learned courts below declining to discharge the petitioners accused, they are more or less identically worded. The first flaw, which could be noticed in the impugned orders, is that the learned Courts below did not discuss the material collected during the investigation and placed before it under section 173 of the Code to satisfy that sufficient materials are available to frame the charge against the accused. The learned trial Court, as far as petitioners of Criminal Misc. Application No.12202 of 2012 are concerned, came to the conclusion that they cannot claimed to be *bona fide* purchaser only on paying the amount of the sale consideration. It is also observed by the learned trial court that without ascertaining the veracity of the power of attorney, the petitioners purchased the parcels of land. The learned trial court believed that the petitioners' role became suspicious, as previously, they have entered into the transaction regarding the parcels of land directly with the

seller belongs to the very same Thakker family and hence, now purchasing the huge chunk of land through a power of attorney without verifying the genuineness of it is a suspicious circumstances. The learned trial court having ascribed reason referred to the affidavit filed by the investigating officer, believed that since the affidavit indicates the role of the petitioner, it is sufficient to send the petitioners for trial. The learned trial court also ascribed reason that the affidavit filed by the investigating officer is truthful. Mainly upon these reasons, the learned trial court declined to discharge the petitioners accused of Criminal Misc. Application No.12202 of 2012.

19. Apt to note that the charge sheet is filed for the offences punishable under sections 467, 468, 471, 406, 120B as well as u/s 365, 344 and 419 of the IPC. Section 467 of the IPC defines punishment of forgery of valuable security, will etc. Section 468 of the IPC defines the punishment for forgery for the purpose of cheating. Section 471 defines using as genuine a forged document or electronic record. Section 406 defines punishment for the criminal breach of trust. The forgery has been defined in section 463 of the IPC, which reads as under:-

*“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.*

20. Thus, it is stated that a person 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, is said to have been committed forgery. It is to be recollected that in the present case, the allegation is levelled to the effect that on the basis of the forged power of attorney, the petitioners have taken away seven parcels of land. Section 464 of the IPC defines making of false documents. It is in three parts. Second part of section 464 deals with alteration of document or an electronic material after it has been made without lawful authority dishonestly. Third part of section 464 deals with making of or altering document causing any person to sign, seal, execute such document knowing that such person, by reason of unsoundness of mind or intoxication or has been deceived. The first part is important. It says that if a person dishonestly or fraudulently makes, signs, seals or executes a document or part of a document; or makes or transmits any electronic record or part of any electronic record; or affixes any electronic signature on any electronic record or makes any mark denoting the execution of a document or the authenticity of the document is said to have been made forged document. The allegations since are in regards to making of false document, forged document and forgery etc., the learned trial Court while deciding discharge plea of the petitioners was required to examine the material collected during

investigation and placed before it u/s 173 of the Code vis-a-vis the role of the petitioners. Keeping in mind legal effects and implication of aforesaid provision of law, with due deference to the order passed by the learned trial Court, such reasons are missing.

20.1 At times, the learned Trial Court was also required to consider that material collected during investigation placed in report under section 173 of Cr.P.C. also indicate FSL report, which prima facie gives impression that complainant and his family members have not signed power of attorney which is the base of the documents upon which registered sale deed was registered. Investigation also prima facie gives impression that no person like Hitesh Thakker ever exists and yet he has been personated by Mr.Tahir Muhammad to obtain power of attorney.

21. It is also to be noticed that offences punishable u/s 365, 344, 419 of the IPC are also alleged against the petitioners accused in the charge sheet. Section 365 defines punishment for kidnapping or abducting with intent secretly and wrongfully to confine person. Abduction is defined in section 362 and kidnapping is defines in section 359; it is in two parts, kidnapping from India defines in section 360 and kidnapping from lawful guardianship defines in section 361. Section 344 defines for wrongful confinement for ten or more days. Wrongful confinement defines in section 340. Punishment for cheating by personation has been defined in section 416.

22. The crisp reading of the impugned order passed by the learned trial Court declining to discharge the petitioners indicates that no discussions in regards to those allegations are made, no reasons are ascribed by the learned trial Court as to how there are suspicion against the petitioners accused in commission of the offence.

23. As far as plea of two other persons for discharge is concerned, petitioner accused Deepak Mandli claims that his role is limited to purchasing stamp paper, prepared draft sale deed, got it engrossed on the stamp paper purchased by him and subsequently facilitated the parties to register the sale deed before the office of the Sub Registrar. In his discharge order, the learned trial Court penned the reason that the petitioner has given identification of Hitesh Thakker without obtaining any proof of identity, which indicates that he is one of the conspirators in the offence. Apt to note that name of the petitioner was not alleged by the first informant in the FIR. But, the name of the petitioner arose from the statement of the co-accused and subsequently, charge sheet has been filed. In the aforesaid circumstances, the learned trial Court was required to examine that whether any other material was available against the petitioner accused except the statement of the co-accused, which has no evidentiary value during trial. The net reading of the order passed by the learned Courts below unfortunately again missed the very same discussion.

24. Insofar as discharge plea of petitioner Chandrakant

Shelat is concerned, he claimed that no cognizance can be taken by the Court except the complaint filed by the officer authorized as per section 13 of the Notaries Act. The Court was therefore, required to see that petitioner Chandrakant Shelat has acted merely as notary or his exercise or purported exercise or his action in the offence is more than the role of notary, and whether he is connected with the main accused in forging the documents/ power of attorney. The impugned order passed below Exh.16 cursorily recorded the reason that petitioner Chandrakant Shelat gave Rs.200/- to Mr. Parmar and directed him that person Muhammad Tahir be identified as Hitesh Thakker and upon such, forged power of attorney has been executed and therefore, the allegation made against petitioner Chandrakant Shelat cannot be believed to be an act or function enumerated under the Notaries Act. In a revision, the learned Sessions Court while reiterating the said reasons, observed that one Mr. Bhagwandas Parmar has given identification as advocate and has been paid Rs.200/- for giving identification of Hitesh Thakker by petitioner Chandrakant Shelat and it is sufficient to believe that he is not acted under the Notaries Act as notary, but he is conspirator in the offence. Said Bhagwandas Parmar is also accused in the said offence. His statement again, as observed herein above, could not be proved to be a vital proof, as statement of co-accused has no evidentiary value in the trial.

25. In nutshell, the learned trial Court as well as learned Sessions Court declined the urge of the petitioners to discharge only on the ground that sections 120B and 114 of

the IPC are also alleged against the petitioners and no direct evidence in hatching the conspiracy or abatement can be found out. The findings of the learned trial Court and in some matters, learned Sessions Court to deny the urge of the petitioners for discharge are unsatisfactory. The learned JMFC was required to sift the material collected during investigation being now part of charge sheet and satisfy that sufficient material is available to put the accused into trial.

26. It is also to be noted that again the discharge qua these petitioners lacking disclosure as to how these petitioners have committed the offence u/s 365, 344, 419 of the IPC. Unfortunately, the learned revisional Court fell in the same error. The order of the revisional Court again is found to be of same nature. The Court at the stage of framing of the charge is expected not to act mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court is sitting in trial, hearing arguments after full-fledged trial and appreciating evidence, whether the prosecution has made out case beyond reasonable doubt. What is required for the Court while deciding plea of discharge is that the Court must satisfy that the material, a case is made out for the accused to stand trial. As said earlier, strong suspicion is sufficient, but it should be founded on some material and the material must be such as can be translated into evidence at the stage of trial.

27. In the aforesaid reasons, the orders of the learned trial Court and confirmed by the learned Sessions Court in some matters are required to be quashed and set aside and the matters are required to be remanded back to the file of the learned JMFC, Patdi to be decided afresh in accordance with law.

### **CONCLUSION AND ORDER:-**

28. Resultantly, I pass following order:-

28.1 Criminal Misc. Application No.12202 of 2012 is hereby allowed and the impugned order passed by the learned JMFC, Patdi below discharge application Exh.56 in Criminal Case No.62 of 2012 is hereby quashed and set aside.

28.2 Criminal Misc. Application No.16100 of 2012 is hereby allowed and the impugned order passed by the learned JMFC, Patdi below discharge application Exh.16 in Criminal Case No.62 of 2012 and confirmed by the learned Addl. Sessions Judge, Dhrangadhra in Criminal Revision Application No.12 of 2012 are hereby quashed and set aside.

28.3 Special Criminal Application No.2744 of 2013 is hereby allowed and the impugned order passed by the learned JMFC, Patdi below discharge application Exh.54 in Criminal Case No.62 of 2012 and confirmed by the learned Addl. Sessions Judge, Dhrangadhra in Criminal Revision Application No.16 of 2012 are hereby quashed and set aside.

28.4 Special Criminal Application No.3647 of 2013 stands disposed of as having become infructuous, as prayed by learned advocate Mr. Hriday Buch appearing with learned advocate Mr. Jay Thakker for the petitioner, as relief claimed in the petition is now not surviving as offence u/s 365, 344, 419 of the IPC has already been added in the FIR and investigation is completed and charge sheet is also filed.

28.5 All discharge applications at Exhs.56, 16 and 54 are restored to the file of learned JMFC, Patdi to be considered afresh in accordance with law and on its merits without being influenced by its earlier order so also present order.

28.6 It is clarified that the observations and findings recorded herein above are limited to decide the present petitions and therefore, it would not come in the way of the learned JMFC, Patdi to decide discharge application afresh.

28.7 As issues are pending since 2012, the learned JMFC shall make an endeavour to decide discharge application as early as possible.

29. Rule made absolute to the aforesaid extent. Direct service is permitted.

**(J. C. DOSHI,J)**

SHEKHAR P. BARVE

Original copy of this order has been signed by the Hon'ble Judge.  
Digitally signed by: SHEKHAR PRAFULBHAI BARVE(HC00200), Principal Pvt. Secretary, at High Court of Gujarat on 08/09/2025 14:28:37