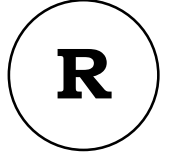


Reserved on : 18.11.2025
Pronounced on : 25.11.2025

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 25TH DAY OF NOVEMBER, 2025



BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No. 100611/2025

BETWEEN:

- 1 . MR. D.MOHAMMED JAVED
S/O D.HUSSAIN SAB
AGED ABOUT 36 YEARS
PETTY HOTEL BUSINESS
R/O HOUSE NO.85 (PRESENT)
OLD D. NO.18, WARD NO.18,
BEHIND MAYURA HOTEL
COURT ROAD, BALLARI.
- 2 . MR. RAFIQ AHAMED
S/O LATE MEHABOOB SAB
AGED ABOUT 41 YEARS
CARRYING ON PETTY BUSINESS
R/O H.NO.21, WARD NO.18
BEHIND MAYURA HOTEL
COURT ROAD, BALLARI.
- 3 . MR. HUSSAIN SAB D.,
S/O D.HUSSAIN SAB
AGED ABOUT 69 YEARS,
PETTY HOTEL BUSINESS
R/O HOUSE NO.85 (PRESENT)
OLD D. NO.18, WARD NO.18

BEHIND MAYURA HOTEL
COURT ROAD, BALLARI.

... PETITIONERS

(BY SRI MOHAMMED ABRAR S., ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
THROUGH BRUCEPET POLICE STATION
BALLARI DISTRICT
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
DHARWAD – 580 008.

2 . M.RAMDASAREDDY
S/O LATE MOLAGAVALLI LAKSHMIKANTHA REDDY
AGED ABOUT 66 YEARS
R/O DOOR NO.2, K.C. ROAD
BALLARI CITY, BALLARI TALUK
BALLARI DISTRICT – 583 101.

... RESPONDENTS

(BY SRI T.HANUMAREDDY, AGA FOR R1;
SRI S.S.YADRAMI, SENIOR ADVOCATE A/W.,
SRI GIRISH V.BHAT, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., (528 OF B.N.S.S) PRAYING TO QUASH THE IMPUGNED COMPLAINT IN PC NO. 364/2019 GIVEN BY THE RESPONDENT NO.2 AND IMPUGNED FIRST INFORMATION REPORT DATED 12.03.2020 IN CRIME NO. 38/2020 REGISTERED BY THE RESPONDENT NO.1 BRUCEPET PS BALLARI AND IMPUGNED CHARGE SHEET IN CC NO. 747/2020 AND ALL ENTIRE PROCEEDINGS PENDING ON THE FILE OF I ADDL. CIVIL JUDGE AND JMFC BALLARI FOR THE OFFENCES P/U/SEC. 420, 465, 468 AND 471 R/W 34 OF IPC AS AGAINST THE PETITIONERS/ACCUSED NO.1 TO 3.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.11.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

Petitioners - accused Nos.1, 2 and 3 are at the doors of this Court calling in question proceedings in C.C.No.747/2020 registered for the offences punishable under Sections 420, 465, 468 and 471 read with 34 of the IPC.

2. Facts in brief, germane, are as follows:

The petitioners are the residents of Ballari and are said to be living in the place for 60 to 70 years and are in the possession of all the necessary documents. It is their contention that they have been paying the Municipal taxes of the respective properties, which comes within the precincts of the City Corporation, Ballari. The second respondent is the complainant. A suit comes to be instituted by the second respondent and others in O.S.No.177/2019 seeking declaration and possession of the suit schedule properties mentioned therein, against the defendants, who are the petitioners

herein, who are in possession of the properties, which are said to have been included in the schedule. The suit is instituted in the year 2019. Immediately thereafter, the second respondent sets the criminal law into motion, not by registering a complaint before the jurisdictional police, but by invoking Section 200 of the Cr.P.C. before the learned Magistrate. It is then a private complaint comes to be registered in P.C.R.No.364/2019. The learned Magistrate refers the matter for investigation under Sub-section (3) of Section 156 of the Cr.P.C., for investigation into the matter, by an order dated 04.03.2020. The jurisdictional police on the directions of the learned Magistrate register a crime in Crime No.38/2020 for the offences punishable as afore-quoted. A writ petition comes to be filed challenging the registration of the crime. During the pendency of the said petition, the police conduct investigation and file their charge sheet. On the charge sheet so filed by the police, the case is registered before the concerned Court in C.C.No.747/2020. It is this, that has driven the petitioners to this Court in the subject petition.

3. Heard Sri Mohammed Abrar S., learned counsel for the petitioners, Sri T. Hanumareddy, learned Additional Government Advocate for respondent No.1 and Sri S.S.Yadrami, learned senior counsel for Sri Girish V. Bhat, learned counsel for respondent No.2.

4. Sri Mohammed Abrar S., learned counsel for the petitioners taking this Court through the documents appended to the petition or even the complaint before the learned Magistrate would submit that it is verbatim similar to what is registered before the Civil Court. It is the averment in the plaint before the civil Court that the petitioners are in possession of the suit scheduled properties, who have not vacated from the said properties, even after they are purchased by the complainant. Therefore, the complainant sought declaration and possession by filing the suit. The matter is purely civil in nature as the petitioners and their ancestors have been residing in the said properties for 60 to 70 years. The second respondent by setting the criminal law into motion is wanting to get eviction of these petitioners faster than the civil proceedings from the schedule properties. Therefore, he would submit that the

impugned criminal proceedings are an abuse of the process of the law.

5. *Per contra*, Sri S.S.Yadrami, learned senior counsel for respondent No.2 - complainant would submit that the police after investigation have filed an elaborate charge sheet. Findings in the charge sheet are that the petitioners have forged the documents and are in possession of the suit scheduled properties for the last 50 years and therefore, the matter requires investigation at the hands of the jurisdictional police. The learned senior counsel submits that in the light of the *prima facie* findings, the petitioners should face the trial and come out clean in a full blown trial. He seeks for dismissal of the petition.

6. Learned Additional Government Advocate would also toe the lines of the learned senior counsel appearing for the respondent by seeking disposal of the petition, on the score that the jurisdictional police after investigation have filed the charge sheet and the petitioners must face the trial.

7. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record.

8. The afore-narrated facts are not in dispute. The second respondent - complainant is said to be the purchaser of the property abutting the place, where the petitioners are residing in Ballari. Initially, he institutes a civil suit in O.S.No.177/2019. It becomes necessary to notice the contents of the plaint in the civil suit, which reads as follows:

**"PLAINT FILED ON BEHALF OF THE PLAINTIFFS UNDER
ORDER VII RULE 1 R/W SECTION 26 OF THE CODE OF
CIVIL PROCEDURE**

The plaintiffs above named humbly submit as follows:

1) The plaintiffs are the original owners of the suit schedule properties and they have given Power of Attorney to their Power of Attorney Holder M.Nandish S/o. Ravindra Babu, to lookafter, to develop and to improve the properties mentioned in the power of attorney. The power of attorney is also authorized and given the power to represent, to appear before any authorities and also before the courts, it is also authorized the power of attorney holder, to file appropriate proceedings on behalf of the plaintiffs. Original General Power of Attorney is herewith filed along with the plaint for the kind perusal of this Hon'ble court.

2) It is germane to submit that, the grand father of the plaintiffs No.2 to 4 namely Late. Molagavalli Lakshmireddy son of Late. Patil Dasireddy had purchased landed properties bearing

Sy. No.952 admeasuring 3.93 acres and Sy. No.951/B admeasuring 0.72 acres situated in Ballari City, through Court Sale and got registered vide document No.2719/1939 dated 25-09-1939, registered before the Joint Sub-Registrar at Ballari Town. Since then the said properties were in possession and enjoyment purchaser i.e., M.Lakshmireddy, therefore he had absolute right, title and interest over the said properties. It is pertinent to submit that, since the properties situated within the limits of Ballari City, the said properties converted into T.S. number and its corresponding T.S. number is 7/2, thereafter it is sub-divided into 7/2A, B, C, D, E, F, G and H. It is pertinent to submit that, the said properties situated at Heart of the city i.e., near to the old Central Bus Stand, Ballari and nearer to the court. The said properties are located in Prime area of Ballari which is also called as Central Library area. It is further pertinent to submit that, a small bypass road which leading from double road to court, passing through these properties.

3) It is further pertinent to submit that, after demise of said M.Lakshmireddy, his only son namely M.Lakshmikantha Reddy had inherited the said properties purchased under the 1939 registered sale deed. It is further submit that, during the life time of said Lakshmikantha Reddy, he and his sons i.e., plaintiffs 2 to 4 had divided their entire joint family properties including the above said T.S.No.7/2 property by, metes, and bounds on 01-01-1976 among themselves and said Partition was recognized under Section 171 of Income Tax Act, as per the orders of the Income Tax Officer dated 23-07-1977. It is further germane to submit that, the said Lakshmikanthareddy and his sons i.e., plaintiffs 2 to 4, in order to have a registered document in respect of the said partition of their joint family properties they got registered the Memorandum of Partition dated 29-12-2008 vide document No.5990/2008-09. In the said Memorandum of Partition father of the plaintiff No.2 to 4 took the properties mentioned in Schedule 1 of the said deed as his share of 1/5th i.e., 20% share out of the property called as Mayura Complex, during the life time of Lakshmikanthareddy his share of property was enjoyed by him as absolute property and died intestate.

4) It is further germane to submit that, after death of Lakshmikanthareddy, his wife, who is plaintiff No.1 and his sons, who are plaintiffs 2 to 4 have succeeded the estate of the

deceased Lakshmikanthareddy including the above T.S. No.7/2 as per the Hindu Succession Act. Therefore, the plaintiffs are absolute owners and have been in possession and enjoyment of the T.S. No.7/2 as full ownership over the said properties, the said properties stand in the name of the plaintiffs jointly in all the relevant records i.e., Municipal Records, Survey records and other records.

5) It is pertinent to submit that, the sub-division numbers of T.S. No.7/2G admeasuring 4385 sq. feet and T.S. No.7/2H admeasuring 7383 sq. feet, in all both the T.S. numbers admeasuring 11768 sq. feet. It is further pertinent to submit that, both sub-division numbers are abutting each other. It is further relevant to submit that, at the time of purchasing in the year 1939 the total property called as Amer Building. It is further pertinent to submit that, at the time of construction of Mayura Hotel and other annexure buildings, the plaintiffs have constructed / put up some sheds / Huts in T.S. No.7/2G and H for the purpose of labours as well as some RCC rooms for godown purpose in the above two sub-division numbers. It is further pertinent to submit that, during the time of construction of Mayura Hotel Complex and other buildings, the labours used to stay in the sheds and Hats, after completion of construction the sheds, Huts and two rooms were kept idle in the above stated sub-division T.S. numbers,

6) It is further germane to submit that, the plaintiffs originally hail from Molagavalli village in Alur Taluq, Kurnool District, Andhra Pradesh and also they owned properties in Andhra Pradesh also. Therefore the plaintiffs are not permanently residing at Ballari and they used to go to their native place to maintain and develop their properties. By taking undue advantage of the plaintiffs absence from the City and also by taking advantage of non visiting of the T.S. No.7/2, some 8 to 10 families including the defendants had unauthorisedly occupied and started staying in the above stated sheds and rooms, without knowledge and permission of the plaintiffs. The said 8 to 10 families were residing in the said sheds and Huts illegally and without any iota of right, title and interest over the said sheds / Huts and Rooms. It is further pertinent to submit that, recently the plaintiffs have noticed the illegal occupancy of the said families, the plaintiffs have warned those families to vacate from the sheds / huts and rooms. It is submitted that in

the mean while the plaintiffs due to their advanced age and old age ailments, they is better to execute power of attorney to lookafter, to develop and to deal in all other aspects with regard to the T.S.No.7/2G and 7/2H. Accordingly the plaintiffs have executed the Power of Attorney in favour of power of attorney on 29-05-2019 in favour of Sri. M.Nandish son of M.Ravindra Babu. After executing the said power of attorney, the power of attorney holder had negotiated with the illegal occupants and convinced some of them and made them to vacate on their own. The power of attorney holder dealt the vacated families with humanitarian grounds by giving financial assistance to have their accommodations. The defendants families have not vacated from their respective properties, the said properties are now the subject matter of the suit and hereinafter referred them as suit schedule properties.

7) It is pertinent to submit that, the suit schedule properties are situated towards the extreme Eastern side of the T.S. No.7/2G, which are fully described in the schedule column. The defendants without having any iota of right, title and interest over the schedule property have illegally occupied and illegally staying in suit schedule properties. It is further pertinent to submit that, the defendants forcibly and illegally continued their possession in the suit schedule properties. The defendants have no any sort of rights to remain in the suit schedule properties as the suit schedule properties are absolute properties of the plaintiffs and which are part and parcel of T.S. No.7/2G which is a part and parcel of the properties purchased under 1939 Registered sale deed by original purchaser namely M.Lakshmikanthareddy.

8) It is further relevant to submit that, after vacating the other families, the power of attorney holder dismantle the sheds / huts in T.S. No.7/2H and also partly in T.S. No.7/2G and now only one sheds and an R.C.C. Building and an open space are left in the Eastern side of T.S. No.7/2G, i.e., suit schedule properties, wherein the defendants 1 and 2 are staying and the defendant No.3 is claiming illegal rights on that open space. It is further relevant to submit that, the plaintiffs have recently learnt that the defendants have fabricated and concocted some documents to lay false claim over the sheds and structures in which they are residing in suit schedule T.S. numbers. It is further pertinent to submit that, after gaining the knowledge of

fabrication of the documents, the plaintiffs have obtained the relevant documents under the R.T.I. and came to know that the defendants have concocted some documents and also created the fictitious sub-division numbers on papers in collusion with the concerned authorities. It is further pertinent to submit that, the defendant No.2 without the knowledge of the plaintiffs, have made some alterations to the old store room and residing in that. The defendants have been residing in their respective schedule properties, without having right, title and interest over the said properties. It is further pertinent to submit that, the defendants stay is absolutely illegal and unauthorized. It is further pertinent to submit that, the defendant No.2's father has allegedly executed a Registered Gift Deed with regard to the schedule-B property vide document No.16292/2016-17 dated 25-03-2017, the said alleged Gift Deed executed by the second defendant's father in his favour is absolutely void document and it is not binding on the plaintiffs' title. It is further pertinent to submit that, the defendant No.3's father namely Mehaboob Sab had executed a registered WILL with regard to the schedule-C property in favour of third defendant vide document No.00213/2018-19 dated 18-12-2018, the said alleged WILL is void document and it is not binding in the title of the plaintiffs. It is further pertinent to submit that, due to the above alleged registered deeds a cloud is casted upon the title of the plaintiffs over the suit schedule properties, therefore, the plaintiffs are seeking title with regard to the suit schedule properties only.

9) Therefore, in view of the above facts and circumstances the plaintiffs are constrained to approach this Hon'ble court to seek the intervention of the Hon'ble court into the matter by granting decree for declaration and consequential reliefs of possession and permanent injunction. It is further pertinent to submit that, the plaintiffs left with no other efficacious remedy except to file this suit for declaration and consequential reliefs to safeguard their rights and interest in the suit schedule property.

10) The plaintiffs are herewith filing the General Power of Attorney executed by the plaintiffs in favour of their power of attorney dated 29-06-2019, certified copy of the sale deed dated 05-09-1939 vide document No.2719/1939, the Xerox copy of the partition deed, Encumbrance Certificate, Mutation order pertaining to the T.S. No.7/2G and 7/2H in favour of the

plaintiffs, Form No.3 for the year 2010-11 of both T.S. Numbers, latest Form No.3 of both T.S. Numbers, survey sketch and extract of both T.S. numbers, an Endorsement dated 06-07-2019 issued by CMC, Ballari, Tax paid returns and receipts under Self Assessment scheme from 2010-11 to current year, Guideline price list issued by Sub-Register office, Ballari, for the kind perusal of this hon'ble court. It is relevant to submit that as far as the original title deed i.e., 1939 document is concerned, the original is not in the custody of the plaintiffs as it was misplaced and therefore the plaintiffs are relying on the secondary evidence by producing the certified copy of the title deed. The plaintiffs are herewith producing the alleged gift deed dated 04-02-2017 executed in between the defendant No.1 and his father, the Amended document dated 25-03-2017 is also herewith produced for the kind perusal of this Hon'ble court. The plaintiffs further produced the copy of WILL executed by the third defendant's father in his favour dated 08-12-2018, for kind perusal of the Hon'ble court.

11) The cause of action arose on 25/27th March, 1939 when the grand father had purchased the land bearing Sy.No.952 and 951/B, wherein the suit schedule property is part and parcel of the said property, again 29-12-2008 when the plaintiffs have got divided the entire joint family properties by way of registered partition deed, on all other dates when the plaintiffs got the mutations in their respective names, again on 29-05-2019 when the plaintiffs have executed the power of attorney in favour of their power of attorney holder Sri. M.Nandish on all other subsequent dates when the power of attorney holder negotiated with the defendants and finally on 28-06-2019 when the power of attorney holder issued a legal notice through his counsel to the defendants to ask them to vacate from the T.S. No.7/2G, the said cause of action continues and arose at Ballari, which is within the jurisdiction of this Hon'ble court. It is pertinent to submit that, the of the plaintiffs, therefore the plaintiffs are added all the three defendants in this suit with regard to the common reliefs .

12) The suit of the plaintiffs is valued for the purpose of court fee and jurisdiction as follows:

i) As far as Schedule-A property, approximate total measurements are 720 sq. feet, the present market price as per

the Sub-Registrar Office is of Rs.1,300/- per sq. feet. Therefore the total value of this schedule property is Rs.9,36,000/-.

ii) As far as Schedule-B property, the approximate total measurements are 720 sq. feet, the present market price as per the Sub-Registrar Office is of Rs.1,300/- per sq. feet. Therefore the total value of this schedule property is Rs.9,36,000/-.

iii) As far as Schedule-C property, approximate total measurements are 1000 sq. feet, the present market price as per the Sub-Registrar Office is of Rs.1,300/- per sq. feet. Therefore the total value of this schedule property is Rs.13,00,000/-.

iv) Therefore, the total suit subject matter value is for the purpose of court fee and jurisdiction is valued Rs.31,72,000/-, there upon the court fee of Rs. 1,52,285 is herewith paid under Section 24(b) of the Karnataka Court Fees and Suits Valuation Act.

v) As far as the cancellation of the alleged deeds are concerned, no court fee is required to pay as the relief is ancillary relief to the main relief.

13) Therefore it is prayed that the Hon'ble court be pleased to decree the suit in favour of the plaintiffs as against the defendants.

a) to declare that the plaintiffs are the absolute owners of the suit A, B and C Schedule properties, which are part and parcel of T.S.No.7/2G:

b) order to handover the possession of the suit schedule properties;

c) Award costs of the suit: and

d) Grant such other relief/s as this Hon;ble court may deems fit and proper under the circumstances of the case, in the interest of justice.

Sd/-
Advocate for the Plaintiffs

sd/-
Plaintiffs"

It is the admission of the complainant in the plaint itself that 8 to 10 families are residing in sheds and huts illegally without any right. It is these petitioners who are residing. Thus, the petitioners are residing in the area for long time. Therefore, a declaration and possession is sought at the hands of the concerned Court by the second respondent. The notice is issued, but no injunction is granted. On the score that no injunction is granted, the complainant sets the criminal law into motion by registering a private complaint before the learned Magistrate.

9. The petitioners – defendants before the civil Court submitted their written statement in O.S.No.177/2019. It read as follows:

- “45. The suit of the plaintiffs is not maintainable as the plaintiffs do not have any iota of title, right or any document to prove and claim that they are the owners of suit schedule properties more particularly the plaint C schedule property.
46. The suit filed by the plaintiffs is liable to be rejected as the suit is not filed by the persons claiming to have the right over the suit schedule properties and the alleged power of attorney holder is not having any right, legally to file the suit and he is not a competent and capable person to file the suit on behalf the plaintiffs and therefore the very locus standi of the plaintiffs to file the suit through the power of attorney holder is challenged and at the outset the defendant no.3 prays the Hon'ble court to frame a

preliminary issue and reject the suit as not maintainable as the power of attorney which is alleged to be filed by the plaintiffs is not a legal document and therefore the suit of the plaintiffs has to be rejected in limine.

47. The suit of the plaintiffs is not maintainable as all the alleged family members of late. Lakshmikanth Reddy to whom the plaintiffs alleged to belong and claim to be the legal heirs all the family members of late, Lakshmikantha reddy have not filed the suit nor all of them have given / executed the power of attorney in favour of M. Nandish s/o. M. Ravindra Babu to file the suit and therefore the suit filed by part and only projected members is not maintainable as the suit is filed for declaration of title and possession and in view of all the family members not being party to the suit as plaintiffs the suit is liable to be rejected for non joinder of all proper and necessary parties and therefore the defendant no.3 prays the Hon'ble court to frame an issue and reject the suit in this regard.
48. At the outset the defendant no.3 submits that the plaintiffs are alleged to be claiming to be owners more particularly they claim title through court sale dt: 25-09-1939 which is alleged to be purchased by late. M. Lakshmikanth Reddy who is the alleged grand-father of plaintiffs no.2 to 4 and the property alleged to be purchased is the landed property bearing Sy no.952 measuring 03-93 acres and land bearing Sy No.951/B measures: 0-72 acres but the plaintiffs has, utterly failed to allege that by way of legal and authentic document that the above said lands have been converted into Town Sy. No. 7/2 and therefore the VERY IDENTITY OF PROPERTY ALLEGED TO BELONG TO THE PLAINTIFFS THROUGH THEIR PLEADINGS DO NOT REVEAL AND CONFIRM AND TALLY THAT THE PROPERTIES ARE CONVERTED INTO T.S. NO.7/2 WITH THE SUB-DIVISIONS 7/2A, B, C, D, E, F, G & H,
49. AND THEREFORE THE IDENTITY OF THE SUIT SHCEDULE PROPERTY IS NOT THE PROPERTY ALLEGED TO BE PURCHASED BY THEIR GRAND FATHER AND THEREFORE THE SUIT OF PLAINTIFFS HAS TO BE REJECTED IN LIMINE AS THERE IS NO MATCHING/CORROBORATING WITH THE

PROPERTIES AND THEREFORE THE SUIT OF PLAINTIFFS IS TO BE REJECTED AND UNDER ORDER-VII, RULE-1 OF CPC.

50. The defendant no.3 further submits that not only the identity of property tallies with the sale deed alleged to be belonging to their grand-father with suit schedule properties but also the plaintiffs have failed to make a note of the measurements of the plaint schedule properties and therefore the plaintiffs are not entitled to the claim of declaration and possession and further. the plaint C schedule property does not belong to the plaintiffs at all and they are not entitled to the relief over the said property.
51. The defendant no.3 submits that the entire plaint A, B & C schedule properties are not the properties of the plaintiffs as they were the Govt. properties and the plaint B and C schedule property and other properties adjacent to properties are granted properties by the Tahsildar Ballari by way of Hakku patras to the residents.
52. The defendant no.3 submits that the plaint C schedule property originally belongs to his joint family members as his father namely Mehaboob Sab and his brother Dadavali and other family members who were jointly living together in the plaint C schedule property since nearly 70-80 years. The defendant no.3 and his family members belong to very poor and downtrodden community. After the demise of the father of defendant no.3 his uncle Dadavali, the defendant no.3 and other family members are all residing in plaint C schedule property which is a hut. After the demise of Mehaboob sab his brother Dadavali took care of the entire family of his brother Mehaboob sab. During the life time of Dadavali he had submitted an application to the Tahsildar Ballari that the plaint C schedule property being the Govt., property, Dadavali and his brother Mehaboob sab and family members residing since 70-80years more so during their parents time seeking for the grant of patta of the plaint c schedule property.
53. In view of the application submitted by the uncle of defendant no.3 Dadavali the Tahsildar Ballari has granted

the Hakku patra on 01-07-2002 in favour of Dadavali with regard to plaint C schedule property which is situate in TS No.7/2, measuring 30 x 40ft., having boundaries East - Chandrashekar property West property of Hussainsab (plaint B schedule property) Ediga hostel, South Road. The defendant no.3 submits that the grant of Hakku patra by Tahslidar Ballari was made in favour of Dadavali as per the law, rules and regulations and in view of the possession and enjoyment of the father of defendant no.3, his uncle Dadavali and all family members and at no point of time the plaint C schedule property belong to the plaintiffs nor they were ever in physical possession and enjoyment of the property.

54. The defendant no.3 submits during the life time of his father, his uncle Dadavali the taxes to plaint C schedule property was paid by them since a long time and they have been paying water taxes and also the electricity charges to the authorities since a long which vouches for their lawful possession as owners.
55. The defendant no.3 submits that his uncle Dadavali was a bachelor and he stayed and resided with the defendant no.3 and family members and he was taken care of till his death by defendant no.3 & family members during his life time. Dadavali had great love and affection towards defendant no.3 being his nephew who was taking care of him till his death and therefore out of love and affection late. Dadavalli uncle of defendant no.3 executed a registered Will on 18-12-2018 in favour of defendant no.3 with regard to plaint C schedule property and after the death of Dadavali the defendant no.3 became the absolute owner of plaint C schedule property as a beneficiary and legatee and he became the absolute owner and continued to pay the taxes to the property.
56. The defendant no.3 submits that the fact of the plaint C schedule property being assigned, granted by the Tahsildar to Dadavali and the entire family of defendant no.3 residing in the property since nearly 70-80 years is known to the plaintiffs and also call the adjacent persons beside the plaint C schedule.

57. The plaintiffs who are not the owners are never in possession of the property at any point of time and as the defendant no.3 and his family members are in physical and lawful possession in plaint C schedule property since 70-80 years the plaintiffs are ousted from possession and they have no legal right to claim ownership or possession over the property. The Plaintiffs have failed to show the measurements of the Plaint Schedule properties, and the extent and boundaries not being correct reveals the Plaintiffs are not the owners of the Plaint schedule properties at all.
58. The suit of the plaintiffs is LIABLE TO BE REJECTED IN LIMINE AS THE PLAINTIFFS AS NOT STATED AND PLEADED IN THE PLAINT THE EXACT DATE, PERIOD, YEAR ON WHICH THEY CAME TO KNOW WHEN THE DEFENDANTS, OR DEFENDANT NO 3 OCCUPIED THE PLAINT C SCHEDULE PROPERTY NOR WHEN THEY DEMENADED THE DEFENDANT NO.3 AND FAMILY MEMBERS TO VACATE, ON THE BASIS OF VAGUE PLEADINGS AND NO CAUSE OF ACTION SUIT HAS TO BE REJECTED FOR WANT OF CAUSE OF ACTION UNDER ORDER VII RULE 1 OF CPC AND THE HON'BLE COURT HAS TO FRAME A PRELIMINARY ISSUE AND DISMISS THE SUIT.
59. The Defendant No 3 has come to know that Plaintiffs are all highly rich, having immense properties, highly having political support and influence and having men and muscle at their behest, and their alleged power of attorney is notoriously famous for using illegal, high handed means to vacate and threaten poor and innocent persons to grab their properties, and seeing the defendant no 3 and his family members being poor, and Plaint C Schedule Property being very valuable, and to knock off the property by hook or crook and having tried illegal means, having failed have filed this false suit against defendant No 3 which is not maintainable and has to be dismissed.
60. Therefore considering the above facts and law the suit of the plaintiffs is totally devoid of truth, merit and legality and the defendant no.3 and his family members who are the owners and in possession and enjoyment of the plaint C schedule property who are all very poor will suffer great

hardship as except plaint C schedule property they do not have any other properties and they will be put to great hardship loss and injury and the defendant no 3 prays the Hon'ble court to dismiss the suit of the plaintiffs as they have file the suit only to grab the property seeing the defendant no.3 being poor helpless, and therefore to dismiss the suit with exemplary costs, of Rs.5 lakhs, which would meet the ends of justice and equity."

Since the present issue triggers on account of the complaint, I deem it appropriate to notice the complaint. It reads as follows:

"1) The complainant is Senior Citizen, peace loving and law abiding citizen and residing in the above said address as a permanent resident of Ballari. The complainant has coming from good reputed family and the complainant and his family owned several properties in and around Ballari.

2) It is germane to submit that, the grand father of the complainant namely Late. Molagavalli Lakshmireddy son of Late. Patil Dasireddy had purchased landed properties bearing Sy. No.952 admeasuring 3.93 acres and Sy. No.951/B admeasuring 0.72 acres situated in Ballari City, through Court Sale and got registered vide document No.2719/1939 dated 25-09-1939, registered before the Joint Sub-Registrar at Ballari Town. Since then the said properties were in possession and enjoyment of the purchaser i.e., M.Lakshmireddy, therefore he had absolute right, title and interest over the said properties. It is pertinent to submit that, since the properties situated within the limits of Ballari City, the said properties converted into T.S. number and its corresponding T.S. number is 7/2, thereafter it is sub-divided into 7/2A, B, C, D, E, F, G and H. It is pertinent to submit that, the said properties situated at Heart of the city i.e., near to the old Central Bus Stand, Ballari and nearer to the court. The said properties are located in Prime area of Ballari which is also called as Central Library area. It is further pertinent to submit that, a small bypass road which leading from double road to court, passing through these properties.

3) It is further pertinent to submit that, after demise of the said M.Lakshmireddy, his only son ADCM Lakshmikantha Reddy i.e., complainant's father had inherited the said properties purchased under the 1939 registered sale deed. It is further submit that, during the life time of said Lakshmikantha Reddy, he and his sons i.e., complainant and his brothers had divided their entire joint family properties including the above said T.S. No.7/2 property by metes and bounds on 01-01-1976 among themselves, and said partition was recognized under Section 171 of Income Tax Act, as per the orders of the Income Tax Officer dated 23-07-1977. It is further germane to submit that, the said Lakshmikanthareddy and his sons i.e., complainant and his brothers, in order to have a registered document in respect of the said partition of their joint family properties they got registered the Memorandum of Partition dated 29-12-2008 vide document No.5990/2008-09. In the said Memorandum of Partition complainant's father took the properties bearing T.S. No.7/2 i.e., called as Mayura Complex and Amar Building.

4) It is further germane to submit that, after death of complainant's father Lakshmikanthareddy, his mother and brothers have succeeded the T.S. No.7/2 as per the Hindu Succession Act. Therefore, the complainant and his mother and brothers are absolute owners and have been in possession and enjoyment of the T.S. No.7/2 as full ownership over the said properties, the said properties stand in the name of the complainant, his mother and brothers jointly in all the relevant records i.e., Municipal Records, Survey records and other records.

5) It is pertinent to submit that, the sub-division numbers of T.S. No.7/2G admeasuring 4385 sq. feet and T.S. No.7/2H admeasuring 7383 sq. feet, in all both the T.S. numbers admeasuring 11768 sq. feet. It is further pertinent to submit that, both sub-division numbers are abutting each other. It is further relevant to submit that, at the time of purchasing in the year 1939 the total property called as Amar Building. It is further pertinent to submit that, at the time of construction of Mayura Hotel and other annexure buildings, the complainant, his mother and brothers have put up and constructed / put up some sheds / Huts in T.S. No.7/2G and H for the purpose of labours as well as some RCC rooms for Godown purpose in the above two sub-division numbers. It is further pertinent to

submit that, during the time of construction of Mayura Hotel Complex and other buildings, the labours used to stay in the sheds and Huts, after completion of construction the sheds, Huts and two rooms were kept idle in the above stated subdivision T.S. numbers.

6) It is pertinent to submit that, the accused and some other persons have trespassed into the Huts and Sheds which were situated in T.S. No.7/2G and H. It is further pertinent to submit that, the complainant on number of occasions requested and warned the trespassers to vacate the premises, despite his repeated demands and requests, the trespassers did not vacate the premises. It is further pertinent to submit that, the complainant and his family being law abiding citizens, they were unable to get vacate the trespassers. Therefore the complainant and his family have constrained to enter into the sale agreement with one Mullangi Nandeesh son of Mullangi Ravindra Babu by executing sale agreement in his favour, on the same day the complainant and his family members have also executed a General Power of Attorney in his favour.

7) It is further pertinent to submit that, after execution of the sale agreement and power of attorney, the power of attorney holder of the complainant has pursued the trespassers and succeeded in getting vacated all the trespassers except the accused. It is further pertinent to submit that, the accused inclined to vacate the premises, therefore the GPA Holder of the complainant has approached the jurisdictional Gandhinagar Police by lodging oral complaint with regard to the trespass. On the basis of said oral information the jurisdictional police have called the accused and asked them about their stay in the premises. It is pertinent to submit that, in response to the police call the accused have produced some documents, the GPA Holder of the complainant shocked to see that the said documents are forged and fabricated documents. Thereafter the GPA Holder of the complainant has obtained all relevant documents from the authorities and verified with the documents produced by the accused, thereby the GPA Holder of the complainant confirmed himself that the documents produced by the accused before the Gandhinagar Police station are forged and fabricated documents. Immediately thereafter the GPA Holder of the complainant informed to the complainant with regard to the forged and fabricated documents.

8) It is further pertinent to submit that, the GPA Holder has also immediately written the letters to the survey department and Municipal Corporation with regard to the forgery and fabrication of documents. It is further pertinent to submit that, as per the records and report given by the ADLR, Ballari, the T.S. No.7/2G, did not sub-divided into any sub-divisions, still it is standing as a consolidated number as 7/2G admeasuring 4385 sq. feet. It is further pertinent to submit that, Municipal Corporation has also received the said information. It is further pertinent to submit that, the accused have made / fabricated that the T.S. No.7/2G as divided into three sub-divisions i.e., 7/2G/1, 7/2G/2 and 7/2G/3. In-fact the T.S. No.7/2G has not at all sub-divided. In this regard the complainant is herewith producing the consolidated survey sketch and extract to substantiate the said fact.

9) It is further pertinent to submit that, on the basis of the fabricated and forged documents, willfully and knowingly well that the said survey sub-division numbers are fictitious, have produced before the corporation and got mutation on their names. It is further pertinent to submit that, on the basis of fictitious, forged and fabricated documents, the accused have got mutation in T.S. No.7/2G and also obtained fictitious Form No.-III from Municipal Corporation, Ballari. The accused have fraudulently and dishonestly have made false documents and produced them before the Municipal Corporation to get fictitious and false Khatha and Form No.-III. It is further pertinent to submit that, the accused have fraudulently and dishonestly made the false documents and knowingly they are false documents, produced them before the City Corporation, Ballari, obtained the false Khathas and Form No.-III with intention to cheat the complainant and his family members.

10) It is further pertinent to submit that, the GPA Holder of the complainant has written the letters to the Corporation to seek the cancellation of the fictitious Khatha and to cancel the Form No.-III which was issued on the basis of false and fictitious survey records. On the said letters the Corporation has issued two show cause notices to the accused stating that why can't cancel the Khatha and Form No.-III issued in favour of the accused. It is also pertinent to submit that, the complainant and his brothers have already filed civil suit in O.S. No.177/2019 on

the file of the Principal Senior Civil Judge, Ballari, for declaration of their title and seeking the cancellation of alleged Gift Deed executed by the father of the accused No.1 in his favour and alleged WILL deed executed by the father of the accused No.2 in his favour. The said suit is pertaining to the civil remedy.

11) It is further pertinent to submit that, the GPA Holder of the complainant namely M.Nandeesh has also written a letter to the Superintendent of Police, Ballari complaining about the trespass, making of false documents, forging and fabrication of documents and fraudulently and dishonestly obtaining Khatha and Form No.-III, through a Registered Post Letter dated 05-09-2019. The said letter received by the Office of the Superintendent of Police, Ballari. It is further pertinent to submit that, despite the said letter the Hon'ble authority is not at all taken any action against the accused.

12) Therefore, in view of the above facts and circumstances, the complainant has left no other efficacious remedy except by filing this private complaint against the accused for the offences punishable u/s 420, 465, 468, and 471 of IPC. The Hon'ble court has ample powers to entertain the complaint and to take the cognizance against the accused for the above said offences. The complainant has already exhausted the remedies available to him by giving complaint to the jurisdictional police and also Superintendent of Police, Ballari. Therefore, as a last resort the complainant is filing this private complaint before this Hon'ble court.

13) Therefore it is prayed that the Hon'ble court be pleased to take the cognizance against the accused and punish them as per the law, in the above case, in the interest of justice.

Sd/-
Advocate for the Complainant

Complainant

VERIFICATION

I, the above named complainant do hereby declare that what is stated in the above paras is true and correct to the best of my knowledge, information and belief.

Verified and signed at Bellary on this day of November,
2019.

Complainant.”

If the contents of the plaint and the prayer sought in this petition are noticed, it is verbatim similar.

10. The learned Magistrate refers the matter for investigation under Section 156(3) of the Cr.P.C., completely ignoring the fact whether the complainant has complied with the provisions of Sub-sections (1) and (3) of Section 154 of the Cr.P.C. before directing the jurisdictional police to register a complaint. A private complaint, in law, should necessarily accompany an affidavit, sworn to by the complainant to its contents. Therefore, there is twin lacunae, when the complaint was referred to investigation to which the learned Magistrate ought to have taken note of.

11. Jurisprudence is replete on this issue by the plethora of judgments rendered by the Apex Court and this Court. The Apex Court in the case of in the case of **PRIYANKA SRIVASTAVA v. STATE OF UTTAR PRADESH**¹ has held as follows:

“

¹ (2015) 6 SCC 287

29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the

Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in *Lalita Kumari* [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

(Emphasis supplied)

The said elucidation has been reiterated by the Apex Court in the case of **BABU VENKATESH v. STATE OF KARNATAKA**² in the following paragraphs:

“... ..

11. It was submitted that, the Magistrate was required to apply his mind before passing an order under Section 156(3)CrPC. It was further submitted that, unless an application under Section 156(3)CrPC was supported by an affidavit duly sworn by the complainant, the learned Magistrate could not have passed an order under the said provision.

... ..

20. It could thus be seen that, though this Court has cautioned that, power to quash criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases, it has specified certain category of cases wherein such power can be exercised for quashing proceedings.

² 2022 SCC OnLine SC 200

21. We find that in the present case, though civil suits have been filed with regard to the same transactions and though they are contested by Respondent 2 by filing written statement, he has chosen to file complaint under Section 156(3)CrPC after a period of one-and-a-half years from the date of filing of written statement with an ulterior motive of harassing the appellants. We find that, the present case fits in the category of No. 7, as mentioned in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] .

... ..

23. After analysing the law as to how the power under Section 156(3)CrPC has to be exercised, this Court in *Priyanka Srivastava v. State of U.P.* [*Priyanka Srivastava v. State of U.P.*, (2015) 6 SCC 287 : (2015) 3 SCC (Civ) 294 : (2015) 4 SCC (Cri) 153] has observed thus : (SCC p. 306, paras 30-31)

"30. In our considered opinion, a stage has come in this country where Section 156(3)CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an

affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in *Lalita Kumari* [*Lalita Kumari v. Govt. of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

24. This Court has clearly held that, a stage has come where applications under Section 156(3)CrPC are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

25. This Court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The Court has noted that, applications under Section 156(3)CrPC are filed in a routine manner without taking any responsibility only to harass certain persons.

26. This Court has further held that, prior to the filing of a petition under Section 156(3)CrPC, there have to be applications under Sections 154(1) and 154(3)CrPC. This Court emphasises the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156(3)CrPC. Inasmuch as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law.

27. In the present case, we find that the learned Magistrate while passing the order under Section 156(3)CrPC, has totally failed to consider the law laid down by this Court.

28. From the perusal of the complaint it can be seen that, the complainant Respondent 2 himself has made averments with regard to the filing of the original suit. In any case, when the complaint was not supported by an affidavit, the Magistrate ought not to have entertained the application under Section 156(3)CrPC. The High Court has also failed to take into consideration the legal position as has been enunciated by this Court in *Priyanka Srivastava v. State of U.P.* [*Priyanka Srivastava v. State of U.P.*, (2015) 6 SCC 287 : (2015) 3 SCC (Civ) 294 : (2015) 4 SCC (Cri) 153] , and has dismissed the petitions by merely observing that serious allegations are made in the complaint."

(Emphasis supplied)

The Apex Court, in its later judgment, in the case of **RANJIT SINGH BATH v. UNION TERRITORY CHANDIGARH**³ has held as follows:

"....

5. We have carefully perused the decision of this Court in the case of *Priyanka Srivastava* reported in (2015) 6 SCC 287. This Court has noted that there was misuse of the provisions of sub Section (3) of Section 156. In paragraphs 30 and 31, this Court held thus:

"30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. **This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are**

³ 2025 SCC OnLine SC 1479

being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

(underlines supplied)

6. Section 154 of the CrPC reads thus:

"154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or

reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

[Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that-

- (a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, 2[section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;
- (b) the recording of such information shall be video graphed;
- (c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.];

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the

information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

7. The requirement of sub-Section (1) of Section 154 is that information regarding commission of a cognizable offence has to be furnished to an officer Incharge of a Police Station. In this case, obviously, the said compliance was not made. It is stated that the Inspector General of Police forwarded a complaint to the Economic Offences Wing. Sub-Section (3) of Section 154 comes into picture only when after a complaint is submitted to the Officer Incharge of Police Station or information is provided to the Officer Incharge of Police Station regarding commission of a cognizable offence, the Officer Incharge refuses or neglects to register First Information Report.

8. Sub-Sections (1) and (3) of Section 154 of the CrPC are the two remedies available for setting the criminal law in motion. Therefore, this Court held that before a complainant chooses to adopt a remedy under Section 156(3) of the CrPC, he must exhaust his remedies under sub-Sections (1) and (3) of Section 154 of the CrPC and he must make those averments in the complaint and produce the documents in support. However, in this case, the second respondent did not exhaust the remedies. In this view of the matter, we find that both the learned Magistrate and the High Court have completely ignored the binding decision of this Court in the case of *Priyanka Srivastava*."

(Emphasis supplied)

The Apex Court in **RANJIT SINGH BATH**'s case holds that there should be an averment in the private complaint regarding

compliance of Section 154(1) and (3) of the Cr.P.C., and an affidavit to that effect should be filed. The Apex Court holds that filing an affidavit along with private complaint is imperative; not only an affidavit, the averments and the documentation with regard to the complaint under Sub-sections (1) and (3) of Section 154 of the Cr.P.C. is obligatory. The non-compliance with the said provision as held by the Apex Court would vitiate the complaint itself. This Court following the afore-quoted judgments of the Apex Court has taken similar view as that of the Apex Court in the latest judgment in the case of **RAMIAH SAMBANDAM @ R.SAMBANDAM Vs. THE STATE OF KARNATAKA**⁴, and quashed the proceedings therein. As the issue in this regard is well settled, the complaint filed before the learned Magistrate requires to be obliterated as it is in violation of law.

12. Driving back to the case at hand, what is the complaint about? The matter which is purely civil in nature, the police on a reference made under Section 156(3) of Cr.P.C., by the learned

⁴ 2025 SCC OnLine Kar 19043

Magistrate conducts investigation and file a charge sheet. The summary of the charge sheet as obtaining in Column No.17 is as follows:

“17. ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶ

ಬ್ರೂಸಪೇಟೆ ಪೋಲಿಸ್ ಠಾಣೆ ಗುನ್ನೆ ನಂ.38/2020, ಕಲಂ 419, 420, 465, 468, 471 ರೆ/ವಿ 34 ಐಪಿಸಿ

ಬಳ್ಳಾರಿ ಬ್ರೂಸಪೇಟೆ ಠಾಣೆಯ ಸರಹದ್ದಿನಲ್ಲಿ ಬರುವ ಬಳ್ಳಾರಿ ಭೂ ದಾಖಲೆಗಳ ಸಹಾಯಕ ನಿರ್ದೇಶಕರ ಕಛೇರಿಯಿಂದ ಪಡೆಯಬೇಕಾಗಿರುವ ನಕಾಶೆಯನ್ನು ಈ ದೋಷಾರೋಪಣ ಪತ್ರದ ಕಾಲಂ ನಂ:12 ರಲ್ಲಿ ನಮೂದಿಸಿದ ಆರೋಪಿ-1 ರಿಂದ 4 ರವರುಗಳು ಸಾಕ್ಷಿ-1 ರವರ ಟಿ.ಎಸ್. ನಂ:7/2ಜಿ, ವಿಸ್ತೀರ್ಣ 4385 ಚ.ಅಡಿಗಳಿರುವ ಜಾಗವನ್ನು ಕಬಳಿಸುವ ಉದ್ದೇಶದಿಂದ ಆರೋಪಿ-1 ಮತ್ತು 3 ರವರುಗಳು ಸಾಕ್ಷಿ-1 ರವರ ಟಿ.ಎಸ್ ನಂ:7/2ಜಿ, ವಿಸ್ತೀರ್ಣ 4385 ಚ.ಅಡಿಗಳಿರುವ ಜಾಗಕ್ಕೆ ಟಿ.ಎಸ್ ನಂ:7/2ಜಿ2. ನಿವೇಶನ ನಂಬರು 12954/08, ಮನೆ ನಂ:85, ವಿಸ್ತೀರ್ಣ 800 ಚ. ಅಡಿಗಳು ಅಂತ ಮತ್ತು ಟಿ.ಎಸ್ ನಂ:7/2ಜಿ, ವಿಸ್ತೀರ್ಣ 4385 ಚ.ಅಡಿಗಳಿರುವ ಜಾಗವನ್ನು 7/2/ಜಿ1, 7/2/ಜಿ2, 7/2/ಜಿ3 ಅಂತ ನಮೂದಿಸಿದ ಸರ್ವೇನಕಾಶೆಯನ್ನು ಸೃಷ್ಟಿಸಿಕೊಂಡು ಬಳ್ಳಾರಿ ಮಹಾನಗರ ಪಾಲಿಕೆಯಿಂದ ನಮೂನೆ-3 ನೇದ್ದನ್ನು ಪಡೆದುಕೊಂಡು ಆರೋಪಿ-3 ಈತನು ಬಳ್ಳಾರಿ ಹಿರಿಯ ಉಪನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿಯಲ್ಲಿ ಆರೋಪಿ-1 ರವರಿಗೆ ದಾನ ಪತ್ರ ಮಾಡಿಸಿದ್ದು, ಆರೋಪಿ-1 ಈತನು ನಂತರ ಸದರಿ ಆಸ್ತಿಯಲ್ಲಿನ ಅರ್ಧ ಭಾಗವನ್ನು ಸಾಕ್ಷಿ-7 & 8 ಮಾರಾಟ ಮಾಡಿ ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಮೋಸ ಮಾಡಿರುತ್ತಾರೆ ಮತ್ತು ಈ ದೋಷಾರೋಪಣ ಪತ್ರದ ಕಾಲಂ ನಂ:12 ರಲ್ಲಿ ನಮೂದಿಸಿದ ಆರೋಪಿ-2 & 4 ರವರುಗಳು ಸಾಕ್ಷಿ-1 ರವರ ಟಿ.ಎಸ್ ನಂ:7/2ಜಿ, ವಿಸ್ತೀರ್ಣ 4385 ಚ.ಅಡಿಗಳಿರುವ ಜಾಗಕ್ಕೆ ಅಸೆಸ್ಮೆಂಟ್ ನಂ:22019/ಬಿ, ಕಟ್ಟಡ ನಂ:116/1, 1200 ಚ.ಅಡಿಗಳು ಅಂದ ಬಳ್ಳಾರಿ ಮಹಾನಗರ ಪಾಲಿಕೆಯಿಂದ ನಮೂನೆ-3 ನೇದ್ದನ್ನು ಪಡೆದುಕೊಂಡು ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಮೋಸ ವಂಚನೆ ಮಾಡಿರುತ್ತಾರೆ ಎಂದು ಕೇಸಿನ ತನಿಖಾ ಕಾಲಕ್ಕೆ ಸಾಕ್ಷಿದಾರರ ಹೇಳಿಕೆಗಳಿಂದ ಮತ್ತು ದಾಖಲಾತಿಗಳಿಂದ ಸಾಬೀತಾಗಿರುತ್ತವೆ.

ಆದರಿಂದ ಆರೋಪಿ- 1 ರಿಂದ 4 ರವರುಗಳ ವಿರುದ್ಧ ಮೇಲ್ಕಂಡ ಕಲಂ ಗಳಡಿಯಲ್ಲಿ ಈ ದೋಷಾರೋಪಣ ಪತ್ರವನ್ನು ತಯಾರಿಸಿ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯಕ್ಕೆ ನಿವೇದಿಸಿಕೊಳ್ಳಲಾಗಿದೆ.”

A perusal of the complaint or the summary of the charge sheet would clearly indicate that a purely civil dispute is dressed with a colour of crime. The offences alleged are the ones punishable under Section 420 of the IPC for cheating and Sections

465 to 471 of the IPC for forgery. Section 420 of the IPC reads as follows:

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Section 420 of the IPC has its ingredients in Section 415 of the IPC. Section 415 of the IPC reads as follows:

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus

dishonestly induces *Z* to buy and pay for the article. *A* cheats.

(c) *A*, by exhibiting to *Z* a false sample of an article, intentionally deceives *Z* into believing that the article corresponds with the sample, and thereby dishonestly induces *Z* to buy and pay for the article. *A* cheats.

(d) *A*, by tendering in payment for an article a bill on a house with which *A* keeps no money, and by which *A* expects that the bill will be dishonoured, intentionally deceives *Z*, and thereby dishonestly induces *Z* to deliver the article, intending not to pay for it. *A* cheats.

(e) *A*, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives *Z*, and thereby dishonestly induces *Z* to lend money. *A* cheats.

(f) *A* intentionally deceives *Z* into a belief that *A* means to repay any money that *Z* may lend to him and thereby dishonestly induces *Z* to lend him money, *A* not intending to repay it. *A* cheats.

(g) *A* intentionally deceives *Z* into a belief that *A* means to deliver to *Z* a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces *Z* to advance money upon the faith of such delivery, *A* cheats; but if *A*, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) *A* intentionally deceives *Z* into a belief that *A* has performed *A*'s part of a contract made with *Z*, which he has not performed, and thereby dishonestly induces *Z* to pay money. *A* cheats.

(i) *A* sells and conveys an estate to *B*. *A*, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to *Z*, without disclosing the fact of the previous sale and conveyance to *B*, and receives the purchase or mortgage money from *Z*. *A* cheats."

Section 415 of the IPC mandates that accused must have lured the complainant into a transaction with a dishonest intention right from inception. Where is the question of these petitioners luring the complainant in the case at hand, it is un-understandable. They do not have any contract between the two or contact between the two. Therefore, the offence under Section 420 of the IPC is loosely laid.

13. The remainder of the offences is Sections 465 to 471 of the IPC, which deals with forgery and forged documents. The petitioners – accused, even according to the plaint averments or the complaint, are said be staying in the said properties for ages on the strength of the documents that they have. It is for the complainant who is a subsequent purchaser, who has approached the Civil Court seeking declaration and possession, to prove his case. Having approached the Civil Court with a verbatim similar relief, second respondent – complainant sets the criminal law into motion for a faster remedy to arm-twist these petitioners, only on the fact that the second respondent – complainant has purchased

the property. It is *sans* countenance that the criminal law machinery cannot be misused by the complainant or the like to get eviction orders faster than the Civil Court can do.

14. Jurisprudence is again replete with quashment of proceedings on civil remedy being dressed with a colour of crime.

14.1. In identical circumstances, the Apex Court in the case of **VIJAY KUMAR GHAI v. STATE OF WEST BENGAL**⁵ has held as follows:

"27. Section 405 IPC defines "criminal breach of trust" which reads as under:

"405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"."

The essential ingredients of the offence of criminal breach of trust are:

- (1) The accused must be entrusted with the property or with dominion over it,
- (2) The person so entrusted must use that property, or;
- (3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,

⁵ (2022) 7 SCC 124

- (a) of any direction of law prescribing the mode in which such trust is to be discharged, or;
- (b) of any legal contract made touching the discharge of such trust.

28. "Entrustment" of property under Section 405 of the Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, "in any manner entrusted with property". So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of "trust". A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.

29. The definition in the section does not restrict the property to movables or immovables alone. This Court in R.K. Dalmia v. Delhi Admn. [R.K. Dalmia v. Delhi Admn., (1963) 1 SCR 253 : AIR 1962 SC 1821] held that the word "property" is used in the Code in a much wider sense than the expression "movable property". There is no good reason to restrict the meaning of the word "property" to movable property only when it is used without any qualification in Section 405.

30. In Sudhir Shantilal Mehta v. CBI [Sudhir Shantilal Mehta v. CBI, (2009) 8 SCC 1: (2009) 3 SCC (Cri) 646] it was observed that the act of criminal breach of trust would, inter alia mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust.

31. Section 415 IPC defines "cheating" which reads as under:

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.”

The essential ingredients of the offence of cheating are:

1. Deception of any person
2. (a) Fraudulently or dishonestly inducing that person—
 - (i) to deliver any property to any person; or
 - (ii) to consent that any person shall retain any property; or
- (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

32. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

33. Section 420 IPC defines “cheating and dishonestly inducing delivery of property” which reads as under:

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

34. Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.

35. To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:

- (i) The representation made by the person was false.**
- (ii) The accused had prior knowledge that the representation he made was false.**
- (iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.**
- (iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.**

36. As observed and held by this Court in R.K. Vijayasarathy v. SudhaSeetharam [R.K. Vijayasarathy v. Sudha Seetharam, (2019) 16 SCC 739 : (2020) 2 SCC (Cri) 454] , the ingredients to constitute an offence under Section 420 are as follows:

- (i) a person must commit the offence of cheating under Section 415; and**
- (ii) the person cheated must be dishonestly induced to:**
 - (a) deliver property to any person; or**

- b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC.

37. The following observation made by this Court in *Uma Shankar Gopalika v. State of Bihar* [*Uma Shankar Gopalika v. State of Bihar*, (2005) 10 SCC 336 : (2006) 2 SCC (Cri) 49] with almost similar facts and circumstances may be relevant to note at this stage : (SCC pp. 338-39, paras 6-7)

"6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of the complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-BIPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid. ... It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the consumer forum in relation to the claim of Rs 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case, it has nowhere been stated that at the very inception that there was intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420IPC.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-BIPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to

an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482CrPC which it has erroneously refused.”

38. There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, as held by this Court in Hridaya Ranjan Prasad Verma v. State of Bihar [Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168 : 2000 SCC (Cri) 786] , the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand, complaint filed by Respondent 2 does not disclose dishonest or fraudulent intention of the appellants.”

(Emphasis supplied)

14.2. The Apex Court in the case of **LALIT CHATURVEDI v. STATE OF UTTAR PRADESH**⁶ has held as follows:

“5. This Court, in a number of judgments, has pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms; and a criminal offence under Sections 420 and 406 of the IPC. Repeated judgments of this Court, however, are somehow overlooked, and are not being applied and enforced. We will be referring to these judgments. The impugned judgment dismisses the application filed by the appellants under Section 482 of the Cr. P.C. on the ground of delay/laches and also the

⁶ 2024 SCC OnLine SC 171

factum that the chargesheet had been filed on 12.12.2019. This ground and reason is also not valid.”

(Emphasis supplied)

14.3. Again, the Apex Court in the case of **NARESH KUMAR**

v. STATE OF KARNATAKA⁷ has held as follows:

“ ”

8. Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case, as held by this Court in Sarabjit Kaur v. State of Punjab, (2023) 5 SCC 360. Similarly, dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, this Court, in Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293, **has held that every breach of contract would not give rise to the offence of cheating, and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise.**

9. In the case at hand, the dispute between the parties was not only essentially of a civil nature but in this case the dispute itself stood settled later as we have already discussed above. **We see no criminal element here and consequently the case here is nothing but an abuse of the process.** We therefore allow the appeal and set aside the order of the High Court dated 02.12.2020. The criminal proceedings arising out of FIR No. 113 of 2017 will hereby stand quashed.”

(Emphasis supplied)

⁷ 2024 SCC OnLine SC 268

14.4. Later, the Apex Court in the case of **S.N.VIJAYALAKSHMI vs. STATE OF KARNATAKA**⁸ has held as follows:

“

42. Coming to the second question i.e., whether civil and criminal proceedings both can be maintained on the very same set of allegations *qua* the same person(s), the answer *stricto sensu*, is that there is no bar to simultaneous civil and criminal proceedings. If the element of criminality is there, a civil case can co-exist with a criminal case on the same facts. The fact that a civil remedy has already been availed of by a complainant, *ipso facto*, is not sufficient ground to quash an FIR, as pointed out, inter alia, in *P Swaroopa Rani v. M Hari Narayana*, (2008) 5 SCC 765 and *Syed Aksari Hadi Ali Augustine Imam v. State (Delhi Admn.)*, (2009) 5 SCC 528. The obvious caveat being that the allegations, even if having a civil flavour to them, must *prima facie* disclose an overwhelming element of criminality. In the absence of the element of criminality, if both civil and criminal cases are allowed to continue, it will definitely amount to abuse of the process of the Court, which the Courts have always tried to prevent by putting a stop to any such criminal proceeding, where civil proceedings have already been instituted with regard to the same issue, and the element of criminality is absent. If such element is absent, the prosecution in question would have to be quashed. In this connection, *Paramjeet Batra v. State of Uttarakhand*, (2013) 11 SCC 673 can be referred to:

'12. ... Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is

⁸ 2025 SCC OnLine SC 1575

given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.'

(emphasis supplied)

43. In *Usha Chakraborty v. State of West Bengal*, (2023) 15 SCC 135, while quashing the FIR therein and further proceedings based thereon, it was observed '*...the factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature'.*"

(Emphasis supplied)

14.5. The Apex Court in its latest judgment rendered in the case of **ANUKUL SINGH v. STATE OF UTTAR PRADESH**,⁹ has held as follows:

"... .."

11.5. Thus, the cumulative principles that emerge are: while the jurisdiction under Section 482 Cr.P.C. is extraordinary and must be exercised sparingly, it is the duty of the High Court to intervene where continuation of criminal proceedings would amount to an abuse of process of law, or where the dispute is purely of a civil nature and criminal colour has been artificially given to it. Conversely, where disputed questions of fact arise requiring adjudication, the matter must ordinarily proceed to trial.

12. The specific case of the appellant is that his father purchased land comprised in Khasra Nos. 18, 19, 20, 21 and 22 situated at Village Sherpur Mafi, District Moradabad, from one Akil Hussain. This land was used for the purposes of Qurbani. According to the appellant, in order to usurp the said property,

⁹ 2025 SCC OnLine SC 2060

the Shaher Imam of Bilari, in collusion with the district administration and under pressure exerted upon the local police, ensured that a series of false criminal cases were foisted against him. **As many as eight FIRs were lodged against the appellant, including the present one, all of which, in substance, arise out of a civil dispute relating to ownership and possession of the property. Initiation of the present criminal proceedings, therefore, amounts to a clear abuse of the process of law, squarely falling within the illustrative categories delineated in *Bhajan Lal*, particularly where the dispute is manifestly civil in nature and the prosecution is maliciously instituted with an ulterior motive.**

13. The record reveals that within a short span, as many as eight FIRs were registered against the appellant. The gravamen of the allegations in the present FIR is that Respondent No. 2/complainant approached the appellant for a loan of Rs. 2,00,000/-, but was allegedly advanced only Rs. 1,40,000/-. It is further alleged that, in connection with the said transaction, an agreement to sell dated 09.11.1998 was executed in respect of a plot owned by the complainant, and that the appellant procured three cheques from Respondent No. 2, which, upon presentation, were dishonoured for insufficiency of funds. Even if accepted in entirety, these allegations disclose, at best, a civil dispute and do not *prima facie* constitute the essential ingredients of the criminal offences alleged.

14. It is significant to note that prior to registration of the present FIR, the appellant had already initiated proceedings against Respondent No. 2, namely a complaint under Section 138 of the N.I. Act (Complaint No. 2402840/2005) before the N.I. Court, Moradabad, as well as FIR No. 120/2002, in which, the complainant himself was arrested. The present FIR was lodged nearly three months after the filing of the Section 138 complaint and seven months after FIR No. 120/2002. The plea that the FIR is a retaliatory counterblast to the proceedings legitimately initiated by the appellant, therefore, carries substantial weight.

15. The mala fide nature of the complaint is further fortified by the fact that, by judgment dated 15.01.2025, the trial Court convicted Respondent No. 2 under Section 138 of the

N.I. Act, sentencing him to one month's imprisonment and imposing a fine of Rs. 90,000/-. This conviction lends strong support to the appellant's case that the initiation of the present FIR was a retaliatory measure, maliciously instituted with an ulterior motive to neutralise the lawful action taken by him.

16. Despite this background, the police proceeded to file a charge sheet dated 16.04.2003 against the appellant for offences under sections 420, 467, and 468 IPC. Even if the allegations are assumed to be true, they unmistakably arise out of a commercial/contractual transaction relating to loan and repayment, which has been given a criminal colour. The case thus falls squarely within categories (1) and (7) of *Bhajan Lal*, namely, where the allegations do not disclose the commission of an offence, and where the proceedings are maliciously instituted with an ulterior motive. Continuation of such prosecution would amount to an abuse of process of law and consequently, warrant quashing under Section 482 Cr.P.C.

17. This Court has, in a long line of decisions, deprecated the tendency to convert civil disputes into criminal proceedings. In *Indian Oil Corporation v. NEPC India Ltd.*, it was held that criminal law cannot be used as a tool to settle scores in commercial or contractual matters, and that such misuse amounts to abuse of process. The following paragraphs from the decision are apposite:

"9. The principles, relevant to our purpose are:

- (i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.*
- (ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when*

the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

- (iii) *The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.*
- (iv) *The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.*
- (v) *A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.*

10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal

prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

18. Similarly, in *Inder Mohan Goswami v. State of Uttaranchal*, it was emphasized that criminal prosecution must not be permitted as an instrument of harassment or private vendetta. In *Ganga Dhar Kalita v. State of Assam*, this Court again reiterated that criminal complaints in respect of property disputes of civil nature, filed solely to harass the accused or to exert pressure in civil litigation, constitute an abuse of process.

19. Most recently, in *Shailesh Kumar Singh @ Shailesh R. Singh v. State of Uttar Pradesh*, this Court disapproved the practice of using criminal proceedings as a substitute for civil remedies, observing that money recovery cannot be enforced through criminal prosecution where the dispute is essentially civil. The Court cautioned High Courts not to direct settlements in such matters but to apply the settled principles in *Bhajan Lal*. The following paragraphs are relevant in this context:

"9. What we have been able to understand is that there is an oral agreement between the parties. The Respondent No. 4 might have parted with some money in accordance with the oral agreement and it may be that the appellant - herein owes a particular amount to be paid to the Respondent No. 4. However, the question is whether prima facie any offence of cheating could be said to have been committed by the appellant.

10. How many times the High Courts are to be reminded that to constitute an offence of cheating, there has to be something more than prima facie on record to indicate that the intention of the accused was to cheat the complainant right from the inception. The plain reading of the FIR does not disclose any element of criminality.

11. The entire case is squarely covered by a recent pronouncement of this Court in the case of "Delhi Race Club (1940) Limited v. State of Uttar Pradesh", (2024) 10 SCC

690. In the said decision, the entire law as to what constitutes cheating and criminal breach of trust respectively has been exhaustively explained. It appears that this very decision was relied upon by the learned counsel appearing for the petitioner before the High Court. However, instead of looking into the matter on its own merits, the High Court thought fit to direct the petitioner to go for mediation and that too by making payment of Rs. 25,00,000/- to the 4th respondent as a condition precedent. We fail to understand why the High Court should undertake such exercise. The High Court may either allow the petition saying that no offence is disclosed or may reject the petition saying that no case for quashing is made out. Why should the High Court make an attempt to help the complainant to recover the amount due and payable by the accused. It is for the Civil Court or Commercial Court as the case may be to look into in a suit that may be filed for recovery of money or in any other proceedings, be it under the Arbitration Act, 1996 or under the provisions of the IB Code, 2016.

12. Why the High Court was not able to understand that the entire dispute between the parties is of a civil nature.

13. We also enquired with the learned counsel appearing for the Respondent No. 4 whether his client has filed any civil suit or has initiated any other proceedings for recovery of the money. It appears that no civil suit has been filed for recovery of money till this date. Money cannot be recovered, more particularly, in a civil dispute between the parties by filing a First Information Report and seeking the help of the Police. This amounts to abuse of the process of law.

14. We could have said many things but we refrain from observing anything further. If the Respondent No. 4 has to recover a particular amount, he may file a civil suit or seek any other appropriate remedy available to him in law. He cannot be permitted to take recourse of criminal proceedings.

15. We are quite disturbed by the manner in which the High Court has passed the impugned order. The High Court first directed the appellant to pay Rs. 25,00,000/- to the Respondent No. 4 and thereafter directed him to appear before the Mediation and Conciliation Centre for the purpose of settlement. That's not what is expected of a High Court to do in a Writ Petition filed under Article 226 of

the Constitution or a miscellaneous application filed under Section 482 of the Criminal Procedure Code, 1973 for quashing of FIR or any other criminal proceedings. What is expected of the High Court is to look into the averments and the allegations levelled in the FIR along with the other material on record, if any. The High Court seems to have forgotten the well-settled principles as enunciated in the decision of this Court in the "State of Haryana v. Bhajan Lal", 1992 Supp (1) SCC 335"

20. Applying the above principles to the facts of the present case, it is manifest that the dispute - concerning repayment of loan money and the alleged coercion in execution of documents - is purely civil in character. The essential ingredients of cheating or forgery are not *prima facie* made out. The institution of multiple FIRs in quick succession, particularly after the appellant had already initiated lawful proceedings, reinforces the inference of mala fides.

21. The High Court, in refusing to quash the proceedings, misdirected itself in law by failing to apply the ratio laid down in ***Bhajan Lal***, and the subsequent authorities referred to above, which uniformly hold that the machinery of criminal law cannot be permitted to be misused for settling civil disputes or to wreak vengeance.

22. Accordingly, the impugned judgment dated 22.10.2019 of the High Court is set aside. FIR No. 47 of 2003 dated 05.02.2003 and the consequential charge sheet dated 16.04.2003, pending before the trial Court, are hereby quashed. This judgment, however, shall not preclude the parties from pursuing civil remedies as may be available to them in accordance with law."

(Emphasis supplied)

The Apex Court in the afore-quoted judgments has clearly held that prosecution should not be permitted on the allegations of breach of contract for the purpose of recovery of money.

15. In the light of the afore-quoted judgments, the registration of the crime is rendered unsustainable. While it is correct that in a given case, on a given set of facts, both civil and criminal laws could be set into motion, as there could be common ingredients, which has a flavour of civil law, and which has a rigour of criminal law. The issue now would be, whether this Court in exercise of its jurisdiction can entertain the petition under Section 482 of the Cr.P.C., and obliterate the crime. This again is no longer *res integra*. The Apex Court holds that in a petition under Section 482 of the Cr.P.C., this Court is permitted to exercise its jurisdiction by reading the complaint between the lines, as abuse of the process of law has become rampant. The Apex Court in the case of **MAHMOOD ALI v. STATE OF UTTAR PRADESH**¹⁰ has held as follows:

"....

13. 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**

¹⁰ 2023 SCC OnLine SC 950

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.

14. In *State of Andhra Pradesh v. Golconda Linga Swamy*, (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:—

“5. ...Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to

prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. **When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.**

6. In R.P. Kapur v. State of Punjab, AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;
- (iii) **where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.**

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an

instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.....”

(Emphasis supplied)

15. In the result, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court of Judicature at Allahabad is hereby set aside. The criminal proceedings arising from FIR No. 127 of 2022 dated 04.06.2022 registered at Police Station Mirzapur, Saharanpur, State of U.P. are hereby quashed.”

(Emphasis supplied)

In the light of the facts obtaining in the case at hand as narrated hereinabove and the judgments rendered by the Apex Court quoted *supra*, if further proceedings are permitted to continue against the petitioners, it would undoubtedly become an abuse of the process of law and result in miscarriage of justice.

16. For the aforesaid reasons, the following:

ORDER

- a. The writ petition is allowed.
- b. The proceedings in P.C.R.No.364/2019 *qua* the petitioners, stand quashed.

SD/-
(M.NAGAPRASANNA)
JUDGE

nvj
CT:SS