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**(2013) 09 GUJ CK 0060**  
**In the Gujarat High Court**

**Case No :** Special Criminal Application Nos. 1157, 1283 and 1535 of 2012

Amrutbhai Hemabhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

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**Date of Decision :** 19-09-2013

**Acts Referred:**

**Citation :** (2014) 1 GLR 766

**Hon'ble Judges :** K.M. Thaker, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

K.M. Thaker, J.—The two petitions being Special Criminal Application No. 1157 of 2012 and Special Criminal Application No. 1283 of 2012 under Sec. 482 of the Code of Criminal Procedure, 1973 and Art. 226 of the Constitution of India are taken out against Criminal complaint/F.I.R. registered as C.R. No. 1-86 of 2012 which is registered at Patan Taluka Police Station. The petitioners, in the said two petitions, have prayed that:

Special Criminal Application No. 1157 of 2012 :

(15)(A) Your Lordships may be pleased to quash and set aside criminal complaint being C.R. No. 1-86 of 2012 registered at Patan Taluka Police Station, Dist. Patan (at ANNEXURE-A hereto) and all further proceedings arising of the said F.I.R.

Special Criminal Application No. 1283 of 2012 :

(13)(A) Your Lordships may be pleased to quash and set aside criminal complaint being C.R. No. 1-86 of 2012 registered at Patan Taluka Police Station, Dist. Patan (at ANNEXURE-A hereto) and all further proceedings arising of the said F.I.R.

1.1. So far as third petition, i.e. Special Criminal Application No. 1535 of 2012 is concerned, the petitioner is the complainant and he has prayed, inter alia, that :

14(B) Your Lordships may be pleased to transfer the investigation in the matter

arising out of F.I.R. being C.R. No. 1-86 of 2012 registered at Patan Taluka Police Station, Dist. Patan by higher authority not below the rank of District Superintendent of Police or such other investigating agency as the Hon'ble Court may deem fit in the interest of justice, equity and good conscience.

With reference to the said third petition being Special Criminal Application No. 1535 of 2012, it is relevant and necessary to mention that the said petition is also taken out in connection with and with reference to the very same complaint/F.I.R., i.e. C.R. No. 1-86 of 2012 which is the subject-matter of the above-mentioned two petitions. However, it is relevant to mention that the said petition is taken out by the complainant, i.e. the respondent in the other two petitions. The other difference between this third petition being Special Criminal Application No. 1535 of 2012 and the said two petitions being Special Criminal Application No. 1157 of 2012 and Special Criminal Application No. 1283 of 2012, is that the petitioner in petition being Special Criminal Application No. 1535 of 2012 (who is respondent in two petitions and is the complainant) has prayed for transfer of investigation in connection with the complaint/F.I.R. being C.R. No. 1-86 of 2012, whereas the petitioners in the above-mentioned two petitions have prayed that the said complaint may be quashed.

1.2. Learned Advocate for the petitioners in the two petitions, viz. Special Criminal Application No. 1157 of 2012 and Special Criminal Application No. 1283 of 2012 have made common submissions while the respondent in the said two petitions—who is the petitioner in the third petition, viz. Special Criminal Application No. 1535 of 2012 has made submissions supporting his petition and opposing the other two petitions. However, since the said three petitions arise from, and are preferred in connection with the same F.I.R./complaint, the petitions are heard together and are decided by this common order.

Respondent No. 2 who is the original complainant, has filed the written complaint/F.I.R. on 8-4-2012, alleging offence under Secs. 447, 420, 465, 467, 468, 471, 474 and 114 of I.P.C.

2. Since, the respondent complainant is common in both petitions and the complaint/F.I.R. against which the two petitions are preferred is also same, and since learned Counsel for the petitioners and the private respondent have made common submissions and raised common contentions, both petitions are heard together and are decided by this common order.

3. The complainant-informant of the impugned F.I.R. is son of original owner of the land which is subject-matter of the dispute and allegations mentioned in the impugned F.I.R. The crux of the allegations made by the complainant is that the accused persons have, by way of conspiracy, forged and fabricated certain documents, including a Power of Attorney, and with help of such documents, accused No. 2 sold ancestral land of the complainant to accused No. 1 and accused Nos. 3 and 4 have helped accused Nos. 1 and 2 by putting their signatures as witness on such false and fabricated documents.

3.1. Accused No. 1 is described as the purchaser of the land in question and accused No. 2 is described as the person who sold the land in question to accused No. 1 with help of forged and fabricated Power of Attorney allegedly granted by complainant's father and accused Nos. 3 and 4 are described as the persons who have acted as witness to the said transaction and the disputed sale-deed.

3.2. The Special Criminal Application No. 1157 of 2012 is preferred by accused No. 1, i.e. the person who is described as the purchaser and also by accused Nos. 3 and 4 who are described as witnesses, whereas the second petition, i.e. Special Criminal Application No. 1283 of 2012 is preferred by accused No. 2 in the impugned complaint who is described as the person who sold the land in question to accused No. 1. The third petition, i.e. Special Criminal Application No. 1535 of 2012 is filed by the complainant who has prayed that the investigation may be transferred to any higher authority not below the rank of District Superintendent of Police.

4. The learned Counsel for the petitioners in both petitions, Special Criminal Application No. 1157 of 2012 and Special Criminal Application No. 1283 of 2012, has claimed that the complaint is actually abuse of process of law. Accused No. 1 has claimed and contended that he is bona fide purchaser for value but without notice and that the allegations in the impugned F.I.R. do not make out any offence against him, i.e. accused No. 1 and/or against accused Nos. 3 and 4. It is also claimed that accused No. 1 has purchased the land by executing the sale-deed which is registered on 12-1-2010. It is also claimed that the constituted attorney, i.e. accused No. 2 had even issued public notice on 25-9-2010 declaring that he has been granted Power of Attorney to sell the land in question, and that therefore, accused Nos. 1, 3 and 4 have acted bona fide and if at all there is any illegality or irregularity, they are merely victim of such illegality. It is also claimed that the impugned complaint filed after gross delay which is not explained. It is also claimed that accused No. 1 is an agriculturist and he has purchased agricultural land and that in view of such facts, the investigation will amount to harassment and abuse of process.

4.1. The learned Counsel for the petitioner in the second petition, viz. Special Criminal Application No. 1283 of 2012, has claimed that Mr. Valjibhai R. Vaghri has executed Power of Attorney in his favour on 7-1-2010 and on strength of the Power of Attorney, he executed the sale on 12-1-2010 in favour of accused No. 1. Accused No. 2, i.e. the petitioner in second petition, has mentioned details of certain civil proceedings which ensued in connection with the land in question. The learned Counsel for accused No. 2 also assailed the impugned complaint on ground of delay and also on the ground that any ingredient of alleged offence is not made out against him. It is claimed that since the complainant did not get any ex-parte interim relief in the suit filed by him, he has subsequently filed the impugned complaint and has tried to convert civil dispute in criminal offence, and therefore, also, the impugned complaint deserves to be quashed.

5. The learned Counsel for the petitioner in the third petition claimed that in view of the facts of the case, the request to transfer the investigation to higher authority may be granted. The learned Counsel for the petitioner in the said third petition, i.e. Special Criminal Application No. 1535 of 2012 also opposed the other two petition, i.e. Special Criminal Application No. 1157 of 2012 and Special Criminal Application No. 1283 of 2012. The learned Counsel for the respondent in the said two petitions (i.e. the petitioner in the third petition) relied on the reply affidavit filed by the complainant in the said two petitions being Special Criminal Application No. 1157 of 2012 and Special Criminal Application No. 1283 of 2012, wherein some of the relevant facts have been mentioned. The complainant has averred in his affidavit that :

5. I say and submit that the land in dispute was permitted to be cultivated by my maternal uncles, namely Shakrabhai Lallubhai and Mohanbhai Lallubhai. I say and submit that both of them duped my father and took illegal and improper advantage of his ignorance and illiteracy by getting up an agreement to sale in respect of the land in dispute said to have been made in favour of Mahadev Harjibhai and Amratbhai Hemabhai. I say and submit that both of them got up a Power of Attorney and other documents. I say and submit that on account of the above registered sale-deed said to have been executed by my father in favour of my maternal uncles on 22nd of September, 2003, my father was constrained to file proceedings against my maternal uncles. Copy of the alleged agreement to sale is annexed hereto and marked as ANNEXURE-R1 to reply.

6. As stated hereinabove, my father has filed Regular Civil Suit No. 104 of 2007 against Shakrabhai in respect of the aforesaid so-called unregistered sale-deed dated 22nd of September, 2003. On the other hand, Regular Civil Suit No. 105 of 2007 was preferred against Mohanbhai in respect of the so-called unregistered sale-deed dated 22nd September, 2003. I say and submit that in so far as Regular Civil Suit No. 105 of 2007 against Mohanbhai is concerned, the same was compromised since it was agreed by Mohanbhai that he had no objection if the so-called unregistered sale-deed dated 22nd September, 2003 is cancelled. Copy of the order passed in Regular Civil Suit No. 105 of 2007 is annexed hereto and marked as ANNEXURE-R2 to this reply.

7. I say and submit that subsequently the said Mohanbhai filed Regular Civil Suit No. 82 of 2008 on 25th of June, 2008 which came to be withdrawn on 12 July, 2010. I say and submit that Shri Amratbhai Hemabhai and Shri Mahadev Harjibhai have preferred Regular Civil Suit No. 187 of 2011 to declare that the compromise recorded in the Regular Civil Suit No. 82 of 2008 is null and void. Copy of the plaint of Regular Civil Suit No. 187 of 2011 is annexed hereto and marked as ANNEXURE-R3 to this reply.

8. I say and submit that in this premises, two Civil Suits namely Civil Suit No. 104 of 2007 filed by my father against Shakrabhai and the Civil Suit No. 187 of 2011 filed by Shri Amratbhai Hemabhai and Shri Mahadev Harjibhai are pending in which no interim relief is granted in favour of either party.

10. I say and submit that the aforesaid document appears to have been used for the purpose of creating dispute everywhere. I say and submit that on 8-5-2006, an agreement to sale is said to be executed by Shri Mohanbhai and sons of Shakrabhai who happened to be my maternal uncle, in favour of Amratbhai and Mahadevbhai.

13. I say and submit that on 11th October, 2010 Shri Amratbhai and Shri Mahadevbhai had filed Regular Civil Suit No. 139 of 2010 against my father and my maternal uncles for perpetual injunction, which is said to have been withdrawn by the plaintiffs of the suit. Thus, the fact remains that the suit filed by the accused petitioners stands withdrawn. Copy of the plaint of the Regular Civil Suit No. 139 of 2010 is annexed hereto and marked as ANNEXURE-R6 to this reply.

14. I say and submit that my father has also filed Regular Civil Suit No 20 of 2012 against Amratbhai and Mahadev by for cancellation of the so-called sale-deed dated 12-1-2010, and the same is pending. Thus, in all the Regular Civil Suit Nos. 104 of 2007, 187 of 2011, 83 of 2008 and 20 of 2012 are pending for adjudication. Copy of the plaint of the Regular Civil Suit No. 20 of 2012 is annexed hereto and marked as ANNEXURE-R7 to this reply.

15. I further say and submit that even the revenue authorities have been pleased to cancel the revenue entries mutated on the basis of the so-called Power of Attorney and sale-deeds, inter alia on the ground of pendency of the civil litigation. I say and submit that the so-called Power of Attorney, in absence of being registered cannot be looked into in view of the amendment in the Registration Act, 1908. Copies of the order passed by the Mamlatdar as well as the report of the Mamlatdar are annexed hereto and marked as ANNEXURE-R8 to this reply.

16. I say and submit that in view of the above, it is evident that the petitioners are out to harass me and my family members by filing suits one after the other. I say and submit that conscious and deliberate attempt has been made by the petitioners to see that I succumbed to their illegal, illegitimate and improper demands of selling away the land for meagre price. I say and submit that from the totality of facts and circumstances of the case, it is evident that title date there is no title in favour of either of the petitioners to claim, and therefore, their submission that this F.I.R. is lodged with a view to abuse of process of law is clearly improper warranting no acceptance.

5.1. Learned Counsel for the respondent-complainant in the said two petitions being Special Criminal Application No. 1157 of 2012 and Special Criminal Application No. 1283 of 2012, reiterated the factual aspects in the affidavit and submitted that since his father's age is 98 years, he has filed the complaint. Learned Counsel for the respondent also submitted that the agreement for cultivation whereby the complainant's father granted restricted and limited right, i.e. right to cultivate the land is misused and the Power of Attorney has been

forged and fabricated. The complainant has alleged that his father has not executed any Power of Attorney as claimed by accused No. 2. Learned Counsel of the respondent-complainant also submitted that when the complainant came to know about the disputed transaction, objections were filed before the Revenue Authorities and after considering the objections raised by the complainant, the competent authority has passed order dated 1-3-2012 in favour of the complainant.

5.2. Learned Counsel for the respondent-complainant submitted that unless the investigation is carried out, the complete facts would not be available before the Court. It is also submitted that in the process of investigation, specimen of signature would be collected which would demonstrate, at least prima facie, as to whether signature on the alleged Power of Attorney is forged or not and that, therefore, the request to terminate the investigation may not be granted. Learned Counsel for the respondent also submitted that instead of terminating the investigation as prayed for by the petitioners and the said two petitions, appropriate direction to transfer the investigation to higher authority not below the rank of District Superintendent of Police may be passed.

6. I have heard learned Counsel for the petitioners and the respondent (who is petitioner in Special Criminal Application No. 1535 of 2012) and have also considered the document and material on record.

7. It is relevant to mention that the petitioners in the said two petitions, viz. Special Criminal Application No. 1157 of 2012 and Special Criminal Application No. 1283 of 2012, seek that the investigation may not be allowed to proceed and should be terminated at its threshold. The said petitioners also seek that the F.I.R./complaint may be quashed even before the investigation is completed and relevant material is collected.

7.1. The effect of the relief prayed for by the said petitioners in the two petitions, is that in absence of relevant material and even without examining as to whether there is material to support the submissions of the petitioners or not and whether the material lend any support to the complainant's allegation, this Court at this stage should record a conclusion, and that too without benefit of relevant material and should terminate the investigation.

8. Therefore, the point for consideration is whether the Court should interfere with the investigation at this stage and whether this Court should, at this stage, pass such an order which would stifle the investigation at its threshold.

8.1. Observation by Hon''ble Apex Court in certain decisions provide guidelines on this count. Hence, it will be appropriate to take into consideration observations by the Hon''ble Apex Court in the decision in case between State of Orissa and Another Vs. Saroj Kumar Sahoo, wherein, Hon''ble Apex Court observed that :

11.....It would not be proper for the High Court to analyse the case of the

complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See: *Dhanalakshmi Vs. R. Prasanna Kumar and Others*, , *Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another*, , *State of Kerala and Others Vs. O.C. Kuttan and Others*, , *State of U.P. Vs. O.P. Sharma*, , *Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada*, , *Satvinder Kaur v. State (Govt. of N.C.T. of Delhi)*, AIR 1996 SC 2983 and *Rajesh Bajaj Vs. State NCT of Delhi and Others*, )."

8.2. The Hon''ble Apex Court has always put a word of caution with regard to any intervention or interference in the process of investigation. In this regard, reference may be made to the observations of the Hon''ble Apex Court in *Sanapareddy Maheedhar and Another Vs. State of Andhra Pradesh and Another*, which read thus :

30.....In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial, and if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing the F.I.R. or complaint or restraining the competent authority from investigating the allegations contained in the F.I.R. or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in the F.I.R. or complaint discloses commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of the F.I.R. or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of the F.I.R. or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Sec. 482 Cr.P.C.

(Emphasis supplied)

8.3. Since, in this case allegations have been made with reference to Power of Attorney, it will be appropriate that reference may also be made to some relevant observations by Hon''ble Apex Court in Paragraph No. 7 in the decision in the case of T. Vengama Naidu Vs. T. Dora Swamy Naidu and Others, , which reads thus :

7.....It was not for the learned Judge at the stage of investigation to examine the nature of the transaction and further to examine as to whether any offence was actually committed by the accused persons or not. At that stage the only inquiry which could have been made was as to whether the complaint or the F.I.R. did contain allegations of any offence. Whether those offences were made out, even prima facie, could not have been examined at that stage as the investigation was pending then. We, therefore, do not agree with the learned Single Judge that the F.I.R. was liable to be quashed. We also do not agree with the learned Judge that there are no ingredients of the offences complained of in the F.I.R. and this was a civil dispute. However, we do not wish to go deeper into that question. Our prima facie examination satisfies us that there were ingredients of offences complained of and, therefore, at that stage the High Court could not have quashed the F.I.R. as well as the investigation. The appeal, therefore, has to be allowed, setting aside the order of the learned Single Judge.

8.4. Likewise, in the decision in the case of State of Bihar Vs. Murad Ali Khan and Others, , the Hon''ble Apex Court has observed that :

15. It is trite jurisdiction under Sec. 482 Cr.P.C., which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court should not embark upon and enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the Court or not.

9. The principles which can be deduced from the observations by Hon''ble Apex Court in various decisions, are that-

(a) the High Court ought not interfere with the investigation or prosecution, or should be slow, careful and circumspect where the entire facts are incomplete and hazy;

- (b) more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material;
- (c) there should not be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal;
- (d) judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest;
- (e) it would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and it would be erroneous to assess the material before it and conclude that the trial cannot be proceeded with;
- (f) the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him;
- (g) proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted;
- (h) however, the inherent power should not be exercised to stifle a legitimate prosecution and the High Court, being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy;
- (i) it is of no significance that the complainant is a person who is inimical or that he is guilty of mala fides and the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused;
- (j) allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the proceedings;
- (k) the inherent powers vested in the High Court under Sec. 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims and the extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety, do not constitute the offence alleged;
- (l) when an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance and the allegations of mala fides against the informant cannot by themselves be the basis for quashing the proceedings;

(m) a proper investigation in the interests of justice becomes necessary to collect material for establishing the offence, and for bringing the offender to book and justice requires that a person who commits an offence has to be brought to book and must be punished for the same, however, if the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice would suffer;

(n) the High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of the F.I.R. or complaint since such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same;

(o) if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power.

10. From the material available on record of present case, it emerges that before the investigation gets concluded and before the Investigation Officer could file appropriate report upon conclusion of investigation, the petitioners have preferred present petition and prayed that the investigation may be terminated.

11. It is relevant to note that the complaint case involves allegations about forged and/or fabricated documents and alleged use of such documents for transferring disputed parcel of land in their (i.e. accused's) favour.

12. At this stage, it would be appropriate to mention that accused No. 2, i.e. the person who claims that complainant's father executed Power of Attorney in his favour, issued a public notice declaring that such Power of Attorney is executed in his favour.

12.1. Now, in this context, it is pertinent to mention that accused No. 2 got the said public notice published on 28-9-2010, i.e. almost 8 months after the date on which the so-called Power of Attorney was allegedly executed in his favour.

12.2. It is pertinent that accused No. 2 claims that Power of Attorney was executed in his favour on 7-1-2010, whereas the said accused No. 2, i.e. the constituted attorney published the public notice on 25-9-2010.

12.3. It is also pertinent to note that it is alleged that on the strength of the so-called Power of Attorney allegedly executed in his favour on 7-1-2010, the said constituted attorney, i.e. accused No. 2 sold the land in question within 5 days, i.e. on 12-1-2010, then, i.e. after having already sold the land, almost 8 months thereafter, he published the notice on 25-9-2010.

13. The said and other relevant aspects deserve to be investigated.

14. It is also pertinent that until now the Investigation Officer does not appear to

have collected specimen signature of the concerned persons, particularly of the donor of the alleged Power of Attorney, and therefore, it is yet not examined and prima facie ascertained as to whether the signature on the disputed Power of Attorney is actually of the donor or not.

15. Besides this, the publication of an advertisement almost 8 months after the alleged execution of so-called Power of Attorney and almost 8 months after the sale-deed was executed, justifies proper and complete investigation.

15.1. On this count, it is relevant to note that the so-called Power of Attorney was allegedly executed on 7-1-2010 and strength of such disputed Power of Attorney, the sale-deed came to be executed on 12-1-2010, whereas the advertisement in connection with the disputed Power of Attorney was published on 25-9-2010.

15.2. In these circumstances and more particularly in absence of sufficient and proper material, it would neither be just nor proper for the Court to record any conclusion, rather it would be premature for this Court to record any conclusion.

15.3. It has been submitted that the Investigation Officer has yet to collect specimen of signature/thumb impression and only thereafter F.S.L. opinion can be called for by the Investigation Officer and further investigation can be, if required, carried out and that, therefore, in view of this Court, it would not be proper for this Court to intervene at this stage in the investigation process and to stifle to terminate at this stage.

16. Recently, in the decision in case between State of Orissa and Others Vs. Ujjal Kumar Burdhan, , the Hon"ble Apex Court has observed, inter alia, that :

7. It is true that the inherent powers vested in the High Court under Sec. 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation.

8. In State of West Bengal and Others Vs. Swapan Kumar Guha and Others, , emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus :

An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to

book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed....Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case.... If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence.

(Emphasis supplied)

16.1. In the case between Dr. Monica Kumar and Another Vs. State of U.P. and Others, , the Hon"ble Apex Court has observed, with regard to jurisdiction under Sec. 482, that :

30. We may reiterate and emphasise that the powers possessed by the High Court under Sec. 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its jurisdiction of quashing the proceeding at any stage. [See Janata Dal Vs. H.S. Chowdhary and Others, ; Dr. Raghubir Sharan Vs. The State of Bihar, ; Kurukshetra University and Another Vs. State of Haryana and Another, ; and Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, ].

31. In fact, the question of mala fides in a case like the present is not at all relevant. If the complaint which is made is correct and offence has been committed which will have to be established in a Court of law, it is of no significance that the complainant is a person who is inimical or that he is guilty of mala fides. If the ingredients which establish the commission of the offence or misconduct exist, then the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or

while examining the evidence. But the mere fact that the complainant is guilty of mala Tides, would be no ground for quashing the proceedings. [See State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others, ; Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, ; State of Bihar and Another Vs. J.A.C. Saldanha and Others, ; State of Orissa and Another Vs. Saroj Kumar Sahoo, ]. There may be some exceptions to the said Rule but we are not concerned with such a case.

(Emphasis supplied)

16.2. In light of the principles explained by the Hon''ble Apex Court in the above-quoted observations, it would not be proper for this Court in exercise of jurisdiction under Sec. 482 of the Code, to enter into the process of determining how weighty the defence raised on behalf of the accused is and evaluating the allegations, at this stage.

17. At this stage, it would be profitable to refer to recent decision by the Hon''ble Apex Court in case between Rajiv Thapar and Others Vs. Madan Lal Kapoor, , wherein the Hon''ble Apex Court has observed that :

29. The issue being examined in the instant case is the jurisdiction of the High Court under Sec. 482 Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Sec. 482 Cr.P.C., at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Sec. 482 Cr.P.C. the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiable refuted, being material of sterling impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Sec. 482 Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the Court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing Paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Sec. 482 Cr.P.C. :

30.1. Step one: Whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: Whether proceeding with the trial would result in an abuse of process of the Court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Sec. 482 Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious Court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.

17.1. As observed by Hon''ble Apex Court, the powers vested in the High Court under Sec. 482 of the Code, when exercised, have far-reaching consequences, most important being the consequence that it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence, and that therefore, the exercise of the said powers should be with utmost caution, care and circumspection.

17.2. The material relied on by the accused to justify the request should be such which would rule out and displace the assertions contained in the charges levelled against the accused and it should be based on indubitable facts and of such character which would overrule the veracity of the allegations levelled by the complainant/prosecution and should be sufficient to reject and discard the accusation without necessity of recording any evidence.

17.3. When the said principles are kept in focus and are applied in present case, then it emerges that the facts and circumstances of the case presented by the petitioner to justify the request that the complaint may be quashed, are not so convincing and satisfying that may persuade the Court to terminate the investigation at its threshold and quash the complaint without allowing the investigation to be concluded.

17.4. On the contrary, the material produced by the accused persons, e.g. the advertisement dated 25-9-2010 justifies the need for investigation and restrains the Court from interfering with the investigation and terminating the investigation at threshold.

18. It is also mentioned that with respect to the land in question, accused No. 1 had filed a Civil Suit being Regular Civil Suit No. 139 of 2010 and had prayed for specific performance of agreement dated 8-5-2006. However, accused No. 1 had subsequently withdrawn the said suit.

19. It is also relevant that a suit being Special Civil Suit No. 20 of 2012 seeking cancellation of the sale-deed is also filed and the said suit is pending without any interim relief. In light of the proceedings which have been taken out by way of Civil suit, it is claimed in the said two petitions, viz. Special Criminal Application No. 1157 of 2012 and Special Criminal Application No. 1283 of 2012 that the complainant has tried to convert the civil dispute into criminal offence and the allegations in the complaint go to show that the dispute is of civil nature.

19.1. So far as the submission on the ground that dispute is of civil nature is concerned, it is appropriate to take into consideration the observations by the Hon''ble Apex Court in the decision in case of Md. Ibrahim and Others Vs. State of Bihar and Another, , wherein Hon''ble Apex Court has observed that a particular case may involve civil dispute as well as criminal offence and ingredients and elements of civil offence may simultaneously exist when the allegations may appear to be in nature of civil dispute and in such cases the proceedings under criminal law may be continued. The Hon''ble Apex Court has observed, inter alia, that :

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

(Emphasis supplied)

19.2. In this context, reference may also be made to the observations by Hon''ble Apex Court in Paragraph No. 9 in the decision in the case of Mahesh Choudhary Vs. State of Rajasthan and Another, , which reads thus :

9. Propositions of law which emerge from the said decision are :

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash

a criminal proceeding, and in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the F.I.R. disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

19.3. In this context, a useful reference may also be made to the observations by Hon''ble Apex Court in the decision in case of Kamaladevi Agarwal Vs. State of West Bengal and Others, . In the said decision in Paragraph Nos. 9, 11 and 12, the Hon''ble Apex Court observed as under :

9. Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending. After referring to judgments in State of Haryana and others Vs. Ch. Bhajan Lal and others, , Rajesh Bajaj Vs. State NCT of Delhi and Others, this Court in Trisuns Chemical Industry Vs. Rajesh Agarwal and others, , held :

Time and again this Court has been pointing out that quashing of F.I.R. or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions (Vide R.S. Raghunath Vs. State of Karnataka and another, and Rajesh Bajaj Vs. State NCT of Delhi and Others, . In the last referred case this Court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations :

10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating were committed in the course of commercial and also money transactions.

11. On Lalmuni Devi Vs. State of Bihar and Others, , this Court held :

There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed.

12. Again in *M. Krishnan v. Vijay Singh*, (Criminal Appeal No. 1028 of 2001 decided on 11-10-2001) this Court held that while exercising powers under Sec. 482 of the Code, the High Court should be slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there is always some element of civil nature. In a case where the accused alleged that the transaction between the parties are of a civil nature and the Criminal Court cannot proceed with the complaint because the factum of document being forged was pending in the Civil Court, the Court observed :

Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a Criminal Court, the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a Civil Court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of.

19.4. In a recent decision in the case between *Arun Bhandari Vs. State of U.P. and Others*, , Hon''ble Apex Court has observed, inter alia, that:

26. At this stage, we may usefully note that some times a case may apparently look to be of civil nature or may involve a commercial transaction but such civil disputes or commercial disputes in certain circumstances may also contain ingredients of criminal offences and such disputes have to be entertained notwithstanding they are also civil disputes. In this context, we may reproduce a passage from *Md. Ibrahim and Others Vs. State of Bihar and Another*, :

8..... But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences, and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See: *G. Sagar Suri and Another Vs. State of U.P. and Others*, , and *Indian Oil Corporation Vs. NEPC India Ltd. and Others*, .

31. In *R. Kalyani Vs. Janak C. Mehta and Others*, , after referring to the decisions in *Hamida Vs. Rashid @ Rasheed and Others*, and *State of Orissa and Another Vs. Saroj Kumar Sahoo*, , this Court eventually culled out the following propositions :

15. Propositions of law which emerge from the said decisions are :

(a) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding, and in particular, a first information report unless the allegations contained therein, even if given face-value and taken to be correct in their entirety, disclosed no cognizable offence.

(b) For the said purpose the Court, save and except, in very exceptional circumstances, would not look to any document relied upon by the defence.

(c) Such a power should be exercised very sparingly. If the allegations made in the F.I.R. disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(d) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

(Emphasis supplied)

It is worth noting that it was observed therein that one of the paramount duties of the Superior Court is to see that person who is absolutely innocent is not subjected to prosecution and humiliation on the basis of a false and wholly untenable complaint.

20. Therefore, having regard to the facts of the case and the above-quoted observations by the Hon"ble Apex Court in various decisions and applying the said principles to the facts of the case, the Court is neither inclined to nor convinced to accept the requests made by the petitioners in the said two petitions, viz. Special Criminal Application No. 1157 of 2012 and Special Criminal Application No. 1283 of 2012.

21. Therefore, the said two petitions are not entertained and are rejected.

22. Now, so far as third petition, i.e. Special Criminal Application No. 1535 of 2012 is concerned, as mentioned at the outset of this order, the petitioner has prayed, inter alia, that the investigation in connection with the complaint/F.I.R. being C.R. No. 1-86 of 2012 may be transferred to a higher authority not below the rank of Superintendent of Police or any other investigating agency.

22.1. As regards the said relief/request, it is relevant to mention that the complaint/F.I.R. in question appears to have been lodged/registered on 8-4-2012 and the petition being Special Criminal Application No. 1157 of 2012 seems to have been filed on or around 13-4-2012 and the initial/first order came to be passed on 16-4-2012, i.e. within about 8 days from the date when the complaint

was lodged. The second petition, i.e. Special Criminal Application No. 1283 of 2012 came to be filed on or around 1-5-2012 and was circulated for hearing on 2-5-2012.

22.2. The said chronology goes to show that in effect and actually any real or effective investigation was not conducted before the Court passed orders in the above-mentioned two petitions.

22.3. Consequently, there is no basis or justification for the petitioner of the said third petition, viz. Special Criminal Application No. 1535 of 2012 to make any submission or allegation with reference to the investigation and seek relief direction to transfer the investigation.

22.4. In the facts of the case, the request made in the said third petition, i.e. Special Criminal Application No. 1535 of 2012 appears to be premature, and therefore, this Court is not inclined to entertain the said request at this stage.

22.5. Any substantial ground and justification for such direction is not made out and as such, there is no scope of any tangible allegation against investigation since any instance demonstrating any illegality, flows or even irregularity in investigation are not cited before this Court and actually, at the time of hearing, it has not been the case even of the petitioner that until now the investigation is not carried out in impartial manner and in accordance with law.

22.6. The petition is preferred and the relief is prayed for on premature apprehension, and therefore, it does not require to be considered at this stage.

22.7. Therefore, the said third petition does not deserve to be entertained, and is consequently, rejected.

In the result, for the foregoing discussion and reasons, the petitions are not accepted. The reliefs prayed for in the petitions do not deserve to be granted. Hence, the petitions are rejected. Orders accordingly. Rule discharged.

At this stage, learned Advocate for the petitioners have prayed that the interim relief, which has remained in operation until now, may be continued for some more time so as to enable the petitioners to take out appropriate proceedings before the Apex Court. The request is not opposed by learned Advocate for the respondent and learned A.P.P. In view of the said request, it is directed that the interim relief, which has remained in operation until now, shall continue till 11-10-2013.