

(2014) 12 GUJ CK 0033
In the Gujarat High Court

Case No : Criminal Misc. Application No. 3615 of 2009

Arvindbhai Shantilal Modi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 482
Penal Code, 1860 (IPC) — Section 120B, 120B, 186, 405, 406

Citation : (2014) 12 GUJ CK 0033

Hon'ble Judges : J.B. Pardiwala, J

Bench : Single Bench

Advocate : R.R. Marshall, Sr. Advocate and A.B. Munshi, Advocate for the Appellant; Alkesh N. Shah, APP, Advocate for the Respondent

Judgement

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J.B. Pardiwala, J.—By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicants-original accused seek to invoke the inherent powers of this Court praying for quashing of the First Information Report registered at the Umra Police Station, Surat, vide C.R. No. I-20 of 2009 for the offence punishable under Sections 416, 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code.

2. The case of the prosecution in brief may be summarized as under:

The applicant no. 1 Arvindbhai Shantilal Modi and others viz., Harivadan Shantilal, Laljibhai Arjanbhai, Shardaben Laljibhai, Haresh Laljibhai, Jayantibhai Ranchhodbhai and Chhaganbhai Shantilal executed an agreement for Sale/ Contract dated 7th July 2003 in favour of Ravjibhai Premjibhai, Veljibhai Mohanbhai, Nanubhai Premjibhai and Devrajbhai Mohanbhai for the land bearing old Revenue Survey No. 9 paiki (new Revenue Survey No. 6, T.P. Scheme No. 1 (Vesu), F.P. No. 17, admeasuring 7268 sq. mtrs. and 6562 sq. mtrs.) against the sale consideration of Rs. 9,84,300=00. The said agreement for sale dated 7th

July 2003 was executed by Arvindbhai Shantilal (applicant no. 1) and others before the Public Notary, viz., Mr. Kamlesh M. Patel. M/s. Arvindbhai Shantilal and Harivadan Shantilal had put their signatures on each of the pages of the Agreement to Sale dated 7th July 2003. Mr. Mukesh Arvindbhai Modi who is the son of the applicant no. 1 and Mr. H.V. Patel have put their signatures in the said Agreement to Sale dated 7th July 2003. The payment of Rs. 9,35,085=00 was made by M/s. Ravjibhai and Veljibhai through an accounts payee cheque. The details of payment made by M/s. Ravjibhai and Veljibhai to M/s. Arvindbhai and Harivadanbhai have been provided as follows:

Explanation = Arvind = Arvindbhai Shantilal Modi

Harivadan = Harivadan Shantilal Modi

Ravjibhai = Ravjibhai Premjibhai

Veljibhai = Veljibhai Mohanbhai

Nanubhai = Nanubhai Premjibhai

Devrajbhai = Devrajbhai Mohanbhai

3. Mr. Ravjibhai Patel paid an amount of Rs. 49,250=00 in cash to Mr. Arvindbhai Shantilal Modi, the applicant No. 1, and Mr. Harivadan Shantilal Modi on 17th July 2003. The receipt of which was acknowledged by M/s. Arvindbhai Modi and Harivadan Modi on 17th July 2003.

4. Smt. Mangiben, widow of Shantilal Nanabhai executed a registered Will dated 30th August 1989 in the Office of Joint Sub-Registrar, Surat-5, in presence of the witnesses Mr. Arvindbhai Shantilal Modi, the applicant No. 1, and Mr. Harivadan Shantilal Modi. The said Will is registered at Serial No. 10916 in Book No. 3 in the Office of the Joint Sub-Registrar, Surat-5 on 30th August 1989. The applicant/petitioner no. 1 Arvindbhai Shantilal Modi and Harivadan Shantilal Modi had put their signatures as witnesses in the registered Will. Smt. Mangiben had bequeathed her share in the land in question to Laljibhai Arjanbhai, Shardaben Laljibhai, Haresh Laljibhai, Jayantibhai Ranchhodbhai and Chhaganbhai Shantilal.

5. The applicant no. 1 Mr. Arvind Shantilal Modi, and Mr. Harivadan Shantilal Modi executed a General Power of Attorney for the land bearing old Revenue Survey No. 9 paiki new Revenue Survey No. 6, T.P. Scheme No. 1 (Vesu), Final Plot No. 17, admeasuring 7268 and 6562 sq. mtrs. in favour of Mr. Ravjibhai Premjibhai Patel on 14th July 2003 before the Public Notary, viz., Mr. C.D. Solanki. M/s. Arvind Shantilal Modi and Harivadan Shantilal Modi had put their signatures on each of the pages of the General Power of Attorney. The said power of attorney was executed in presence of the witnesses M/s. Himanshu J. Aahir and Manharbhai B. Lakhani. M/s. Arvind Shantilal Modi and Harivadan Shantilal Modi were identified by the Advocate-Mr. K.H. Patel. The Power of Attorney is registered in the Book of the Notary Public at Serial No. 641/2003 on 14th July 2003.

6. (1) Harivadan Shantilal, (2) Arvindkumar Shantilal both, through their Power of Attorney Holder Ravjibhai Premjibhai Patel, (3) Laljibhai Arjanbhai, (4) Shardaben Laljibhai, (5) Hareshbhai Laljibhai, (6) Jayantibhai Ranchhodbhai, (7) Chhaganbhai Shamjibhai-3 to 7 themselves, (8) Sushilaben Chhitubhai, (9) Laxmiben Wd./o. Thakorbhai Chhitubhai, (10) Rakeshbhai Thakorbhai, (11) Ajaybhai Thakorbhai, (12) Anjanaben Thakorbhai, (13) Sudhaben Thakorbhai, (14) Reetaben Thakorbhai, (15) Niruben Wd/o. Ranjitbhai Chhitubhai, (16) Brijeshbhai Ranjitbhai, (17) Nileshkumar Ranjitbhai, (18) Divyaben Ranjitbhai, (19) Nilamben Ranjitbhai-8 to 19 through their Power of Attorney holder Himanshu Jerambhai Aahir executed a Sale Deed in the Office of Sub-Registrar, Surat City-1 (Athwa) on 13th November 2005 in favour of the first informant and Mr. Tulsibhai Tirathdas Nihalani for the land bearing old Revenue Survey No. 9 paiki Revenue Survey No. 6, admeasuring 10,400 sq. mtrs., T.P. Scheme No. 1, Vesu-Final Plot No. 17, against sale consideration of Rs. 12,25,000=00. The said sale-deed is registered in the office of Sub-Registrar, Surat City-1 (Athwa) at Serial No. 496, dated 13th November 2005/New No. 11159, dated 2nd August 2006. The seller nos. 8 to 19 were holding 1010 sq. mtrs. of the land while the seller nos. 3 to 7 had sold their share in the land which was bequeathed by the said Smt. Mangiben through the registered Will. M/s. Ravjibhai Premjibhai Patel, Veljibhai Mohanbhai, Nanubhai Mohanbhai and Devrajbhai Mohanbhai were confirming parties to the registered Sale Deed No. 496, dated 13th January 2005 (New No. 11159, dated 2nd August 2006.).

7. (1) Niruben Ranjitbhai Kanchwala, (2) Divyaben Ranjitbhai Kanchwala, (3) Neelamben Ranjitbhai Kanchwala, (4) Brijeshbhai Ranjitbhai Kanchwala, (5) Nileshbhai Ranjitbhai Kanchwala executed the General Power of Attorney for their undivided share in the land bearing old Revenue Survey No. 9 paiki new Revenue Survey No. 6, admeasuring about 3466.66 sq. mtrs. in favour of Mr. Himanshu J. Aahir on 6th April 2003 before the Notary Public, viz., Mr. C.D. Solanki. The said Power of Attorney is registered at Sr. No. 410 of 2003 in the Book of Notary Public on 6th April 2003. Niruben and others were identified by Advocate M. Revenue Survey M. Khalasi.

8. Sushilaben Aahir who is the daughter of Chhitubhai Govindbhai executed an Irrevocable General Power of Attorney qua her undivided share in the land bearing old Revenue Survey No. 9 paiki new Revenue Survey No. 6 paiki 10 Gunthas in favour of Himanshu J. Aahir on 4th February 2004 before the Notary Public Mr. C.D. Solanki and the same is registered in the Book of the Notary Public at Sr. No. 114/2004 on 4th February 2004. Sushilaben was identified by Advocate Mr. B.M. Bariya.

9. (1) Laxmiben Thakorbhai Kanchwala, (2) Anjanaben Thakorbhai, (3) Sudhaben Thakorbhai, (4) Reetaben Thakorbhai, (5) Rakeshbhai Thakorbhai and (6) Ajaybhai Thakorbhai executed the General Power of Attorney for the land bearing old Revenue Survey No. 9 paiki new Revenue Survey No. 6, admeasuring about 10,400 sq. mtrs. paikie undivided share of 3466.66 sq. mtrs. in favour of

Mr. Himanshu J. Aahir before the Notary Public Mr. C.D. Solanki and the said Power of Attorney is registered in the Book of the Notary Public at Serial No. 397/2003 on 1st April 2003.

7. The applicant nos. 6 and 7 had the knowledge that the applicant nos. 1 to 5 are not the owners of the land and the applicant nos. 6 to 7 had the knowledge that the applicant nos. 1 to 5 had no right, title or interest to execute the Sale Deed in favour of the applicant nos. 6 and 7. The applicant nos. 6 & 7 had the knowledge that the opponent no. 2 and Mr. Tulsibhai Tirathdas Nihalani are the owners and possessors of the land in question. However, all the applicants, in collusion with each other, are alleged to have committed offence under Sections 406, 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code.

8. Mr. R.R. Marshall, the learned Senior Advocate assisted by Mr. A.B. Munshi, the learned advocate appearing on behalf of the applicants vehemently submitted that the First Information Report is nothing but an abuse of process of law. Mr. Marshall submits that the plain reading of the First Information Report fails to disclose the commission of any cognizable offence, not to speak of an offence of forgery. Mr. Marshall submits that the applicant no. 7 has filed a Special Civil Suit No. 349 of 2007 for specific performance of the Agreement to Sell dated 12th July 2007. The said suit is still pending. No sooner the applicant no. 7 learnt about the execution of the sale deed in respect of the land in question in favour of the first informant, then he instituted the Special Civil Suit No. 13 of 2009 for a declaration that the sale deed executed in favour of the first informant is null and void and has also prayed for the cancellation of the said sale deed.

9. Mr. Marshall submits that the aforementioned suit was filed on 7th January 2009. The Civil Court issued notice on 9th January 2009 and the hearing of the said suit was to commence from 16th January 2009. Immediately on the service of the summons to the first informant, the first informant filed the impugned FIR.

10. In the impugned FIR, the date of offence is shown to be between 30th August 2007 and the date of the lodging of the FIR.

11. The only allegation according to Mr. Marshall in the impugned FIR is that since the applicant nos. 1 to 5 have executed the sale deed in favour of applicant nos. 6 and 7, after the sale deed in favour of the first informant, that would constitute the offence of forgery and cheating.

12. Mr. Marshall submits that the dispute purely is of a civil nature. The proceedings with regard to the disputed property are pending before the Civil Court and, therefore, to give a colour of criminal offence to such a civil dispute, is an abuse of process of law.

13. In such circumstances referred to above, Mr. Marshall prays that there being merit in this application, the same deserves consideration and the impugned FIR be quashed.

14. On the other hand, this application has been vehemently opposed by Mr. K.K. Trivedi, the learned advocate appearing on behalf of the original first informant. He submits that the plain reading of the FIR discloses commission of cognizable offence and the police should be permitted to complete the investigation. Mr. Trivedi submits that in exercise of the inherent powers, this Court should not embark upon an inquiry, whether the allegations levelled in the FIR are true or false. Mr. Trivedi laid much emphasis on the fact that although the applicant nos. 1 to 5 were not the owners of the land, yet they transferred the property in favour of the applicant nos. 6 and 7. The applicant nos. 6 and 7, therefore, cannot be termed as bonafide purchasers of the property for value without notice.

15. According to Mr. Trivedi, the sale deed executed by applicant nos. 1 to 5 in favour of the applicant nos. 6 and 7 is a false document within the meaning of Section 464 of the Indian Penal Code.

16. Mr. Trivedi submits that not only the offence of forgery is committed, but the accused have also committed the offence of criminal breach of trust and cheating.

17. In such circumstances referred to above, the learned advocate appearing on behalf of the first informant submits that there being no merit in this application, the same deserves to be rejected.

18. The learned APP Mr. A.N. Shah appearing on behalf of the State very fairly submitted that in the first instance, the Police had refused to register the FIR as, prima facie, it was found to be a case of civil dispute between the parties and the parties were already before the Civil Court. However, later on, the First Information Report was registered and vide order dated 30th March 2009 passed by this Court, the investigation came to be stayed.

19. Mr. Shah submits that the Police should be permitted to complete the investigation and, ultimately, if charge-sheet is filed, then it would be open for the applicants to seek appropriate remedy before the appropriate forum in accordance with law for quashing of the charge-sheet. Mr. Shah, therefore, submits that this application deserves to be rejected.

20. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is, whether the FIR deserves to be quashed.

21. From the pleadings and other materials on record, it appears that the Revenue Survey No. 9 (new Survey No. 6) admeasuring 10400 sq. mtrs. of land situated at village Vesu, District: Surat was owned and possessed by one Shri Bhagubhai Prabhubhai and Shri Dahyabhai Prabhubhai.

22. The aforesaid land was purchased by Mr. Shantilal Nanalal Modi and Mr. Arvindbhai Shantilal Modi (applicant no. 1) jointly by a registered sale deed dated 15th January 1971. The Mutation Entry No. 685 of the aforesaid sale was effected on 17th February 1971 and certified on 3rd August 1971.

23. It appears that out of the total land admeasuring 10400 sq. mtrs. the applicant no. 1 and his father Mr. Shantilal sold 1010 sq. mtrs. of land to one Mr. Chhitubhai Govindji and Mr. Ranjithhai Chhitubhai by a registered sale deed dated 11th May 1971. The Mutation Entry No. 788 with regard to the said sale was effected on 22nd November 1972 which was certified on 25th December 1972.

24. This is the crux of the matter.

25. Mr. Shantilal Nanalal passed away on 4th December 1977. The names of the legal heirs were entered in the record of rights vide Mutation Entry No. 1059 dated 22nd November 1978 and certified on 31st January 1979.

26. The widow of Late Shantilal, Smt. Mangiben passed away on 1st December 1993. The name of the legal heirs were brought on record vide Mutation Entry No. 4847. Mr. Harivadan passed away on 27th June 2005. The names of his legal heirs were brought on record vide the same Mutation Entry No. 4847. The legal heirs of Mr. Arvindbhai Modi were brought on record vide Mutation Entry No. 4848.

27. It appears that M/s. Chhitubhai Govindji and Ranjitbhai Chhitubhai initiated proceedings under Section 70-B of the Tenancy Act behind the back of the original landlords and obtained an order in their favour declaring them to be the tenants of the entire land admeasuring 10400 sq. mtrs. The Mutation Entry No. 2275 of the said order was effected in the Revenue record on 22nd March 1999. This is where I would like to emphasize the importance of the circumstance of 1010 sq. mtrs. of land sold by the applicant no. 1 and his father Mr. Shantilal to Mr. Chhitubhai Govindji and Mr. Ranjit Chhitubhai vide registered Sale Deed dated 11th May 1971.

28. The heirs of Mr. Chhitubhai Govindji were brought on record vide Mutation Entry No. 2738 dated 24th January 2002 and certified on 27th January 2002.

29. It appears that the applicant nos. 1 to 5 nor their predecessors-in-title were aware about the tenancy proceedings. They learnt about the same only when the 7/12 extracts were obtained on 25th May 2007.

30. It also appears that Smt. Mangiben, the widow of Shantilal executed a Will which was registered on 30th August 1989, whereby she bequeathed her 1/4th share in favour of Mr. Laljibhai Arjanbhai and others, which appears to be bogus. It also appears that Smt. Daxaben widow of Harivadanbhai, Abhishekbhai, Payalben and the applicant nos. 2 to 5 executed the Agreement to Sell of their undivided share in favour of the applicant no. 7 on 12th July 2007 for total sale consideration of Rs. 17 lac.

31. The applicant nos. 1 to 5 sold their undivided share to the applicants nos. 6 and 7 by a registered sale deed dated 30th August 2007 for a total sale consideration of Rs. 14 lac.

32. It appears that one Ravji Premji Patel, claiming to be the power of attorney holder of the applicant no. 1 herein and his brother Harivadan executed a sale deed on 30th December 2004 in favour of the first informant and Tulsibhai Tirthdas Nihalani in respect of the entire land admeasuring 10400 sq. mtrs. The Power of Attorney holder and three other persons have been shown as the confirming parties. The sale deed was registered on 20th May 2006.

33. It also appears that the first informant applied for permission under Section 63 of the Tenancy Act with the Deputy Collector, and the Deputy Collector vide order dated 17th August 2007 was pleased to grant such permission. The applicants herein challenged the said order by filing Revision Application which appears to be pending.

34. The Mutation Entry No. 5069 of the sale in favour of the first informant was challenged before the Circle Officer on 20th December 2007.

35. Thus, what I find from the chronology of the events noted above is that the first informant wants to turn a blind eye and is not ready to accept that out of 10400 sq. mtrs. of the land only 1010 sq. mtrs. of land was sold to Late Chhitubhai Govindji and Ranjitbhai Chhitubhai vide sale deed dated 11th May 1971. This aspect has created a confusion which is sought to be given the colour of a criminal offence.

36. In my view, no offence of forgery could be said to have been committed even if I accept the case of the first informant to be true that the applicant nos. 1 to 5 executed the sale deed in favour of the applicants nos. 6 and 7 without any right, title or interest over the property. There is no forgery so far as the disputed sale deed is concerned.

37. Before evaluating the contentions advanced on behalf of the parties, it will be useful to briefly notice the scope and ambit of the inherent powers of the High Court under Section 482 of the Code. The section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely; (i) to give effect to an order under the Code; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but is not unlimited. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice.

38. In the case of *R.P. Kapur Vs. The State of Punjab*, , the Supreme Court had summarised some of the categories of cases where the inherent power under Section 482 of the Code could be exercised by the High Court to quash criminal proceedings against the accused. These are: (i) where it manifestly appears that

there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction; (ii) where the allegations in the first information report or the 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.

39. In the case of *Dinesh Dutt Joshi Vs. The State of Rajasthan and Another*, , while dealing with the inherent powers of the High Court, the Supreme Court has observed thus:

"... The principle embodied in the section is based upon the maxim: *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

40. In the case of *G. Sagar Suri and Another Vs. State of U.P. and Others*, , the Supreme Court had opined as follows:

"... Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

41. I am of the view that merely because FIR is registered of a cognizable offence, but if the allegations in the FIR and other material do not constitute a cognizable offence, the same would not be sufficient ground for the police to proceed with the investigation, without there being any order of the Magistrate as per Section 155(2) of the Code of Criminal Procedure.

42. It is true that if an offence is disclosed, the Court will not normally interfere with an investigation into the case and will permit the investigation into the offence alleged to be committed. If, however, the materials do not disclose an offence, no investigation should normally be permitted. Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot

be permitted as any investigation, in the absence of an offence being disclosed, will unnecessarily result into unnecessary harassment to a party whose liberty and property may be put to jeopardy for nothing.

43. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. In considering whether an offence into which an investigation is made or to be made is disclosed or not, the Court has mainly to take into consideration the complaint of the FIR and the Court may in appropriate cases take into consideration the relevant facts and circumstances of the case. On a consideration of all the relevant materials the Court has to come to the conclusion whether an offence is disclosed or not. If on a consideration of the relevant materials, the Court is satisfied that the 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. If, on the other hand the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual.

44. In the FIR, it is alleged that the applicant nos. 1 to 5, knowing fully well that they are not the owners of the land in question, executed the sale-deed in favour of the applicant nos. 6 and 7. For the time being, even if I accept this allegation to be true, it is not in dispute that the sale-deed has been executed by the applicant nos. 1 to 5 with their genuine signatures. What is disputed is the right, title and interest of the applicant nos. 1 to 5 to execute the sale-deed in favour of the applicant nos. 6 and 7. The law in this regard is well settled. The Supreme Court has, in the case of Mohammed Ibrahim and others v. State of Bihar and another, reported in 2010(1) GLH 184, very exhaustively explained as to what will constitute forgery. The ratio as propounded by the Supreme Court in the said case squarely applies in the present case. The relevant paragraphs are reproduced hereinbelow:

"10. Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

11. Section 470 defines a forged document as a false document made by forgery. The term "forgery" used in these two sections is defined in section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to

commit fraud or that the fraud may be committed, commits forgery.

12. Section 464 defining "making a false document" is extracted below:

"464. Making a false document.--A person is said to make a false document or false electronic record---

First.--Who dishonestly or fraudulently-

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or

Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1-A man's signature of his own name may amount to forgery.

Explanation 2-The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words "digital signature" wherever it occurs were substituted by the words "electronic signature" by Amendment Act 10 of 2009].

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

executed false documents, in collusion with the other accused.

14. An analysis of section 464 of Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

15. The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of "false documents". It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category.

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

17. When a document is executed by a person claiming a property which is not

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

45. I am also not able to understand as to on what basis it can be said that the accused applicants have committed an offence of "cheating" as defined under Section 415 punishable under Section 420 of IPC. Though I must state at this stage that the learned counsel appearing for the first informant very fairly conceded that no case is made out so far as Sections 406 and 420 are concerned. He only concentrated on the offence of forgery which, according to him, can be said to have been prima facie committed. But, I have already explained earlier as to why no offence of forgery can be said to have been prima facie established. However, still I shall assign reasons as to why no offence under Sections 406 and 420 of IPC is prima facie disclosed in the present case.

46. I may now consider whether the allegations in the complaint make out a case of "criminal breach of trust" as defined under Section 405 of IPC. The section reads as follows:-

"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 willfully suffers any other person so to do, commits "criminal breach of trust"."

47. According to the Section, a "criminal breach of trust" involves the following ingredients:-

"(a) a person should have been entrusted with property, or entrusted with dominion over property;

(b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and

(c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."

48. Taking into consideration the necessary ingredients to constitute an offence of "criminal breach of trust", no case at all is made out by the first informant. If the dispute relates to the title of the land in question and if two sides claim to be the owner, then there is no question of any entrustment of the property or

dominion over the property. It is not even the case of the first informant that the land in question was entrusted to the accused persons and they had dominion over the land and they have dishonestly misappropriated the same or converted it to their own use.

49. In the case of Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another, , a Bench of two Judges of the Supreme Court observed that two distinct parts were involved in the commission of the offence of criminal breach of trust. The first part consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is the misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created. Therefore, in relation to the offence under Section 405 IPC, the first ingredient that needs to be established is "entrustment". In Common Cause, A Registered Society Vs. Union of India and Others, , the Supreme Court held that:-

"... A trust contemplated by Section 405 would arise only when there is an entrustment of property or dominion over property. There has, therefore, to be a property belonging to someone which is entrusted to the person accused of the offence under Section 405. The entrustment of property creates a trust which is only an obligation annexed to the ownership of the property and arises out of a confidence reposed and accepted by the owner."

50. Now I may come to Section 420 of IPC. Section 415 of IPC deals with "cheating" and 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."

51. It is plain from a bare reading of the Section that to hold a person guilty of cheating, as defined in Section 415 of the IPC, it is necessary to show that at the time of making the promise he had fraudulent or dishonest intention to retain the property or to induce the person so deceived to do some thing which he would not otherwise do.

52. The ingredients required to constitute an offence of cheating have been succinctly laid down in Ram Jas Vs. State of U.P., as follows:

"(i) there should be fraudulent or dishonest inducement of a person by deceiving him;

(ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

53. Similar views were echoed in *M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others*, , wherein it was observed that:

"In order to attract the provisions of Sections 418 and 420 the guilty intent, at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfill the promise by itself would not attract the provisions of Section 418 or Section 420. Mens rea is one of the essential ingredients of the offence of cheating under Section 420. As a matter of fact Illustration (g) to Section 415 makes the position clear enough to indicate that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to a civil action for breach of contract...."

54. It is well settled that in order to constitute an offence of cheating, it must be shown that the accused had fraudulent or dishonest intention at the time of making the representation or promise and such a culpable intention right at the time of entering into an agreement cannot be presumed merely from his failure to keep the promise subsequently.

55. In the same manner, I am also of the view that no case of criminal breach of trust and cheating is born out from the plain reading of the First Information Report.

56. My prima facie examination satisfies me that the averments in the FIR if assume to be true, do not make out any offence under Sections 406, 420, 465, 467, 468, 471, 447, 186, 120B and 504 of IPC.

57. In the result, this application is allowed. The First Information Report registered at the Umra Police Station, Surat, vide C.R. No. i-20/2009 for the offence punishable under Sections 416, 420, 465, 467, 468, 471 and 120B of the Indian Penal Code is hereby ordered to be quashed. Rule made absolute.

58. As noted above, there are two civil suits pending as on today between the parties, (i) Special Civil Suit No. 349 of 2007 pending in the Court of the learned Principal Civil Judge, Surat; and (ii) Special Civil Suit No. 13 of 2009 pending in the Court of the learned Principal Civil Judge, Surat.

59. I clarify that any observations touching the merits of the case are purely for the purpose of deciding the question, whether the FIR should be quashed or not, and shall not be construed as an expression of the final opinion so far as the civil suits are concerned. The two civil suits shall be decided by the Court concerned

on its own merits without being influenced, in any manner, by any of the observations made by this Court in this judgment.