
(2016) 02 GUJ CK 0164

In the Gujarat High Court

Case No : Criminal Misc. Application (For Quashing & set aside Fir/Order)
No. 17557 of 2015, Criminal Misc. Application Nos. 15377, 15868,
16116, 16128, 16994 and 18661 of 2015

Hirabhai Govabhai Parmar

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, Section 409, Section 420, Section 465,
Section 467, Section 469, Section 471
Registration Act, 1908 — Section 32, Section 33, Section 34(3)(1), S

Citation : (2016) 02 GUJ CK 0164

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

Bench : Single Bench

Advocate : R.R. Marshall, Sr. Advocate, Vilav K. Bhatia, Y.V. Bhatt, D.R. Bhatt,
A.M. Dagli, P.M. Darji and K.V. Shelat, Advocates, for the Appellant; Hansa
Punani, for the Respondent

Final Decision : Disposed Off

Judgement

J.B. Pardiwala, J.—1. Since the relief prayed for in all the captioned writ applications is to quash the selfsame F.I.R., those were heard analogously and are being disposed of by this common judgment and order.

2. By these applications, the applicants - original accused persons seek to invoke the inherent powers of this Court praying for quashing of the First Information Report being I-C.R. No. 73 of 2015 registered with the D.C.B. Police Station at Ahmedabad for the offence punishable under Sections 409, 420, 465, 467, 469, 471 and 120B of the Indian Penal Code.

3. For better adjudication and convenience, I deem fit to give a fair idea as to who are the accused persons as there are in all seven applications filed for quashing of the F.I.R.

"(I) The Criminal Miscellaneous Application No. 16116 of 2015 is filed by (i) Sitaben w/o Shivaji Raiji Thakor, (ii) Babuji Shivaji Thakor, (iii) Laxman Shivaji Thakor, (iv) Babiben @ Bhailiben Kantibhai Thakor, (v) Kanubhai Kantiji Thakor, being accused Nos. 1 to 5.

(II) The Criminal Miscellaneous Application No. 15868 of 2015 is filed by Jineshbhai Chandrakantbhai Jani, a practicing advocate, being accused No. 6 in the F.I.R.

(III) The Criminal Miscellaneous Application No. 16128 of 2015 is filed by Ashokbhai Dhanjibhai Prajapati being accused No. 7 in the F.I.R.

(IV) The Criminal Miscellaneous Application No. 17557 of 2015 is filed by Hirabhai Govabhai Parmar, Sub Registrar, being accused No. 8 in the F.I.R.

(V) The Criminal Miscellaneous Application No. 15377 of 2015 is filed by Hasmukhbhai Prahladbhai Raval being accused No. 9 in the F.I.R.

(VI) The Criminal Miscellaneous Application No. 18661 of 2015 is filed by Sureshbhai Ambalal Patel, Talati-cum-Mantri, being accused No. 10 in the F.I.R.

(VII) The Criminal Miscellaneous Application No. 16994 of 2015 is filed Shrenikbhai Rikhavchand Shah (not named in the F.I.R.).

(VIII) The date of lodging of the F.I.R. is 22nd July, 2015. Investigation is almost completed, however, due to pendency of these applications, the Investigating Officer has not filed the chargesheet."

4. Over a period of time, I have noticed a unique modus operandi being adopted by the land grabbers. The land grabbing activity now-a-days is so well articulated that on the first blush, the Court would feel that the dispute appears to be civil in nature, but a little close scrutiny would reveal a large-scale fraud as a part of a well hatched conspiracy.

5. The modus operandi which I have taken note of is that first few individuals are identified and taken in confidence and in most of the cases those individuals are rustic or illiterate people. The documents like family pedigree, records of right, etc. are created showing such persons as the owners of the land. Thereafter, they would be asked to execute a power of attorney in favour of a bogus person and the power of attorney, in turn, would transfer the entire land in favour of a third party who would also be a part and parcel of the well hatched conspiracy and fraud. The whole idea in doing so is to create a picture that the title over the disputed land is in cloud. By raising dispute as regards the title, they thereafter, would submit before the Court that the dispute is civil in nature. They would also initiate civil proceedings in the form of a suit, etc. and then project a picture that the dispute is civil in nature.

6. Somewhat same modus operandi has been adopted in the case in hand, and unfortunately, as pointed out by the Investigating Officer, a practicing advocate and his Clerk are the mastermind behind the entire fraud.

7. The case of the prosecution may be summarized as under:

"7.1 The dispute pertains to a land bearing Block No. 528 (old survey No. 287/1) divided into two parts being 528/A admeasuring 9713 sq. mtrs. and 528/B admeasuring 8498 sq. mtrs. situated at Mouje: Ambli, Taluka : Ghatlodia, District : Ahmedabad.

7.2 The owners of the land in question, namely, (1) Baldevbhai Dwarkadas Patel, (2) Bhavnaben Dwarkadas Patel, (3) Jigneshbhai Baldevbhai Patel, (4) Veenaben Rashmikant Patel, (5) Nipaben Rashmikant Patel, (6) Dhrutiben Rashmikant Patel, and (7) Nimeshkumar Rashmikant Patel executed a registered sale deed in favour of the first informant, namely, Deepak Parmanandbhai Nimbark.

7.3 It is alleged that the accused Nos. 1 to 5 fraudulently by personification claimed to be the owners of a land bearing Block No. 528 situated at Mouje : Ambli, Taluka : Ghatlodia, District : Ahmedabad. The accused Nos. 1 to 5 have nothing to do with the said parcel of land and have no right, title and interest over the property. They have fraudulently claimed the ownership over the entire block number. The original owners belong to the Patel community, whereas the accused persons Nos. 1 to 5, belong to the Thakor community and have no connection worth the name so far as the land in question is concerned. It is alleged that the case in hand is one of a large scale fraud of land grabbing by hatching a criminal conspiracy. The conspiracy is alleged to have been hatched mainly with Jinesh Jani (advocate) the accused No. 6, his Clerk Ashok Prajapati the accused No. 7, and the so-called bogus purchaser Hashmukh Prahladbhai Raval accused No. 9. It is also the case of the prosecution that the Revenue Officers serving as the Sub Registrar, namely, Hirabhai Govabhai Parmar accused No. 8, and Sureshbhai Ambalal Patel Talati-cum-Mantri the accused No. 10 are also involved in the fraud. The accused Nos. 1 to 5 personified themselves as heirs of one deceased Patel Bhudar. They are alleged to have played fraud by committing a forgery in the form of removing "Patel", and replacing "Ravaji" as "Raiji", and as a part of the conspiracy, they, in collusion with Jinesh Jani (advocate) and others, executed an absolute fraudulent, forged and bogus document being a sale deed dated 24th January, 2011 in favour of one Hasmukh Raval the original accused No. 9. The sale deed is alleged to have been executed by the power of attorney holder of the accused Nos. 1 to 5, namely, Ashokbhai Prajapati, Clerk of advocate Jinesh Jani. The purchaser, namely, Hasmukh Prahladbhai Raval, the original accused No. 9 is a resident of Mumbai and is engaged in the business of selling flowers on public road at Bhandup. He is said to have paid a total sale consideration of Rs. 51,00,000/- (Rupees Fifty One lac only) by way of cheques. No such cheques have been encashed, except an amount of Rs. 6,00,000/- (Rupees Six Lac only), and that too paid back to Sitaben Thakor and others by the purchaser Hasmukh Raval and also to the sisters of advocate Jinesh Jani, namely, Dhariniben and Darshanaben.

7.4 It is alleged that the jantri value of the land, at the relevant point of time, was approximately Rs. 5 Crore.

7.5 It is alleged that on the strength of the bogus sale deed, the revenue entries were mutated in the records in collusion with the Sub Registrar and Talati-cum-Mantri. It is also alleged that a false family pedigree was prepared by Sureshbhai Ambalal Patel i.e. the Talati-cum-Mantri accused No. 10 on a mere communication addressed by Babuji Shivaji Thakor without any proof of birth or death certificate of any of the parties. No legal procedure was undertaken in that regard.

7.6 The Deputy Collector had directed the Sub Registrar M.G. Parmar not to register the sale deed dated 24th January, 2011 without verifying the authenticity, legality and ownership right of the sellers as the entire transaction was suspected to be highly doubtful.

7.7 Despite such direction, the Sub Registrar H.G. Parmar proceeded with the registration of the sale deed without verifying the title deed, revenue records, authenticity of the family pedigree, etc.

7.8 When the original owners, namely, Baldevbhai Dwarkadas Patel and others came to learn about the fraud as regards the forged sale deed dated 15th September 2012, they immediately addressed a written complaint to the C.I.D. Crime (Fraud Cell) on 20th May 2014 and issued summons dated 4th June 2014 to the Thakor family.

7.9 On 16th July, 2014, the original owners sold the land to the first informant vide registered sale deed No. 1326 for a total sale consideration of Rs. 20 Crore paid by cheques.

7.10 The D.C.B. Police Station, Gayakwad Haveli, Ahmedabad is investigating into the fraud."

8. The learned counsel appearing for the respective petitioners vehemently submitted that no case worth the name is made out for the Police to investigate. According to the learned counsel, the entire dispute is of civil nature as the same relates to the right, title and interest over the property. They submitted that the civil proceedings are also pending between the parties in that regard. In such circumstances, they prayed that the First Information Report deserves to be quashed.

9. On the other hand, the learned Additional Public Prosecutor appearing for the State - respondent vehemently opposed all the applications and submitted that the investigation is at a very crucial stage. She pointed out, after taking instructions from the Investigating Officer who is personally present in the Court that more than a prima facie case is made out against each of the applicants, except one to file chargesheet. The learned Additional Public Prosecutor further pointed out that the case in hand is one of a large scale fraud and valuable parcel of land is sought to be grabbed by committing forgery.

10. She submitted that the investigation should be permitted to be concluded in accordance with law and no case is made out to quash the F.I.R. at this stage.

11. Mr. Anshin Desai, the learned counsel appearing for the first informant also opposed all the applications vehemently and submitted that the investigation should be permitted to be completed against all the accused persons. Mr. Desai submitted that even if, there is some element of a civil dispute, that by itself, is not sufficient to scuttle a legitimate prosecution and that too at the stage of investigation.

12. Mr. Desai placed reliance on the following decisions:

"(1) Sushil Suri v. C.B.I. and another [, 2011 (5) SCC 708] (paras 24, 25, 26 and 27)

(2) State of Bihar and another v. M.D. Khalique and another [, 2002 (1) SCC 652] (paras 4, 7 and 8)

(3) Gangadhar Kalita v. State of Assam and others [2015 (9) SC 647] (paras 6 to 11)

(4) Shilarani v. State of U.P. and another [2005 (13) SCC 409]

(5) Mahavirprasad Gupta and another v. State of National Capital Territory of Delhi and others [, 2000(8) SCC 115] (paras 4, 5, 10, 11 and 12)

(6) The Criminal Miscellaneous Application No. 17949 of 2014 in the case of Anmol Vaidhyaprakash Agrawal v. State of Gujarat and another dated 23.03.2015 (internal page Nos. 5 to 9).

(7) Kamladevi Agrawal v. State of West Bengal and others [, 2002 (1) SCC 555] (paras 7, 9, 15 and 17)

(8) Mahesh Chaudhari v. State of Rajasthan and another [, 2009(4) SCC 439] (paras 11, 12, 14, 17 and 18).

(9) Tamil Nadu Mercantile Bank Limited v. State through Deputy Superintendent of Police and another [, 2014(3) SCC 755] (paras 9 to 16)

(10) M.V. Majmudar v. State of Gujarat [2011 (0) GLHELHC - 226376 (Para 8)

(11) Syed Askari Hadi Ali Augustine Imam v. State (Delhi Admn.) [, 2009 (5) SCC 528] (paras 21 and 22)

(12) Rajesh Bajaj v. State of NCT of Delhi and others [, 1999(3) SCC 259] (paras 9 to 12)

(13) T. Vangamnaidu v. T. Duraswaminaidu and others [, 2007(12) SCC 93] (paras 3, 4, 7 and 8)"

13. I take notice of the fact that the Investigating Officer has filed a detailed affidavit-in-reply highlighting the role alleged to have been played by each of the applicants. I may quote the reply as under:

"2. The Thakor family are the main persons from who details are required and I

have recorded statements and collected evidence as far as the Thakor family is concerned. I have taken statements of Babuji Shivaji Thakor on 25.03.2015, 09.09.2015, 08.10.2015, 13.10.2015 and it is evident from the statements recorded till now that Thakor family is not the owner of the disputed land, Thakor family have illegally identified themselves as heirs and legal representatives of Patel Bhudar Raijibhai by stating Baldevbhai as Bhudar and Ravajibhai as Raijibhai, this way Thakor's which is altogether a different cast have become heirs of Patel Bhudar Raiji who was a Patel. In the statement of Babuji Shivaji Thakor he has confessed that he has not even seen the land and that he cannot even identify the land, he states that he had an auto rickshaw and it was one Suresh Patel who told him that there is a land based on which the whole issue has started, that Suresh Patel had lured Babuji Shivaji Thakor stating that Thakor family will get Rs. 1 crore if they sign where Suresh Patel tells them, Suresh Patel is a land broker and Babuji Shivaji Thakor has also stated that since his birth he does not know anything about this land, that the Thakor family has no other land and they are not farmers by profession. He stated that Suresh Patel had told them that they will get Rs. 1 crore based on which Babuji Shivaji Thakor told his mother and others and then Suresh Patel came with a typed document, the contents of the document are not known to Babuji Shivaji thakore but he signed the same and who is the purchaser, why it is sold, by whom it is sold is not known to Babuji Shivaji Thakor and Rs. 15 lacs are paid till now to Babuji Shivaji Thakor and others, Rs. 3 lacs by cheque and Rs. 12 lacs by cash and according to Babuji Shivaji Thakor Baldev @ Bhudar s/o of Ravaji @ Raiji is brother of his father Shivaji but he does not know the name of his own uncle's wife, that he has no idea about the suit, the contents of the suit and why what is the prayer in the suit, he has only signed the same because he was to get Rs. 1 crore. He Thakore's are not co-operating with the investigation by not coming for statements so summons were issued to them for registering their statements.

3. Sitaben Thakor had stated that she is not aware about Baldev @ Bhudar s/o Ravaji @ Raiji, she does not know him and has no details about him though she is wife of Baldev @ Bhudar brother Shivaji, she has stated that even she not heard of any such land from the time she got married to Shivaji Thakore and she has not seen any such land. She has put her thumb impression because Babuji Shivaji Thakor has told her. She also stated that neither she nor her husband Shivaji Thakor has ever tilled any agricultural land including the land in question and she is not aware of what papers are required to sale the land.

Neighbours and close relatives of Sitaben Thakor and Babuji Shivaji Thakor namely Janakben Becharji Popatji Thakor has also stated that they are neighbors since many years but they are not aware about any Bhudar Raiji and the same statement is given by Dhuliben Shankarji Thakor.

4. I say that as far as advocate Jinesh Jani is concerned, Babuji Shivaji Thakor has also stated that he is aware of the mobile number of advocate Jinesh Jani but he is not aware who this advocate is. Babuji Shivaji Thakor has also stated

that there is no mortgage deed with them and he is also not aware of who is in possession of land at this point of time and Ashok Dhanji Prajapati knows everything. He does not know why his uncle Baldevji and his grandfather Ravaji were shown as alias Budar and Raiji in the "Pedhinamu".

5. I say and submit that as far as advocate Jinesh Jani is concerned, as per the order of this Hon'ble Sessions Court he was granted anticipatory bail, with a condition to mark his presence on 1st and 15th of every month and is committing breach of condition, advocate Jinesh Jani is to be called again after getting statements of his sisters Dharini and Darshna and his relative Pinakin Jayantilal Jani. Some amount has been paid by the purchaser Hasmukh Raval to the two sisters of advocate Jinesh Jani and his relative Pinakin Jayantilal Jani which is being reflected in the bank statement of Mr. Raval but he has not been able to give satisfactory answers for this transfers. Further investigation will give a clear role of advocate Jinesh Jani. One fact is clear that this land transaction is mastered by someone having proper legal knowledge because the land belonging to someone else has been sold to someone else and the sellers claiming to be owners i.e. Thakor family have no idea about the land, there is no documentary proof regarding their title instead everything contrary is found out, Thakor family had not right, authority, business or interest in this land and it was only the original owners namely Ishwar Savchanddas family and others who are the owners of the land in question, the purchaser's role also is very doubtful because the purchaser claims to have bought the land for Rs. 51 lacs, the transaction is only of Rs. 6 lacs and from Rs. 6 lacs also Rs. 2 lacs each have been paid back to Dhariniben and Darshnaben, sisters of advocate Jinesh Jani and Rs. 1 lac has been paid to one Dhiren, it can be said that Hasmukh Raval may never have paid Rs. 51 lacs to the Thakor family, Hasmukh Raval is doing business of selling flowers at Bhandup, Mumbai, he has no PAN number, he does not pay income tax and he claims to have income of Rs. 1000 per day and now claims that he had a transaction of Rs. 51 lacs, Hasmukh Raval - the purchaser has not been able to satisfy or produce any document showing consideration of Rs. 51 lac, income of Rs. 51 lac. Hasmukh Raval - the purchaser now says that he is now carrying death ceremonies and last right rituals, Hasmukh Raval is from Gerita, Kolavada, District: Mehsana and the advocate Jinesh Jani's father Chandrakant Jani is a friend of Hasmukh Raval as claimed by Hasmukh Raval himself, in short Jinesh Jani is also basically from Gerita, Kolavada, District: Mehsana, that he has land admeasuring 1.5 vigha at Mehsana, that he has no knowledge or details of amount of stamp duty and this amount totaling to Rs. 78,29,500/-, he has not been able to give any details of this amount as the give any details of this amount as to who has paid, from which account it is paid and when and how it is paid, that Hasmukh Raval has given Rs. 2 lacs each to Dharini Chandrakant and Darsha Chandrakant for (gharkam) for household work, that Pinakin Jayantilal Jani is a friend and therefore he has given Rs. 2 lacs to him. Dhiren is given to Rs. 1 lacs, it is stated by him that Dhiren is son-in-law but he does not know the name of Dhiren's wife.

I say and submit that the role of Hasmukh Raval - the purchaser is very clear that he is a purchaser and has acted along with other accused to grab this valuable property without any finance as stated above. On being asked about the various Cash transactions of Rs. 49,000 and 75,000 Hasmukh Raval has thought it fit not to answer at all, the passbook entries clearly show that the above mentioned amount has been paid to Hasmukh Raval seemingly as a re-deposit. He also states that Thakor family does not have bank account but during the course of investigation it has been found that the Thakore's do have banks accounts.

Hasmukh Raval has also given a statement that he is aware that revenue record does not have the names of the sellers, that there is no title of Thakor family on this land, that he was conveyed that a valuable piece of land is given away for Rs. 51 lacs and therefore as far as revenue record is concerned, he will somehow get it changed that is how he has been told by Ashok Dhanji Prajapati - power of attorney holder of Thakor family. Hasmukh Raval has stated that he knows that advocate Jinesh Jani is son of Chandrakant Revashankar Jani, Hasmukh Raval has also stated that he does not know Anil @ Vipinlal Mehta, though on being sale in favour of Anil @ Vipinbhai Mehta and that Hasmukh Raval also does not know Shankar Prabhudas Prajapati who is the power of attorney of Thakors in same agreement to sale for the very land in question, therefore even Hasmukh Raval is not giving exact details and information and not-cooperating with the investigation.

6. Ashok Dhanji Prajapati he is doing liaison work with advocates, phone records if seen, all of the above are in direct contact with advocate Jinesh Jani all throughout, Ashok Dhanji Prajapati is in contact with advocate Jinesh Jani all the time, that Ashok Dhanji Prajapati has been told by someone that he will be paid Rs. 10,000/- for this alleged document of sale and Rs. 5,000/- more if he becomes power of attorney holder, on being asked who has told you this, he has thought it fit not to reply and thus he is not-cooperating with the investigation, he also states that in village Form No. 7/12 names of Thakor family are existing, on being asked about the record where the names of Thakor family are existing he could not show at any place and has kept silence on this question, he also states that because I am doing work with advocates of liaising Thakors have come to me and said that these are the revenue records and such a transaction has to be undertaken and therefore I help them out, contrary to that Thakors have no knowledge of what Ashok Dhanji Prajapati is saying, that because Ashok Dhanji Prajapati is doing liaising work he is in contact with advocate Jinesh Jani and helps him out in revenue records proceedings of village Form No. 7/12 etc.

7. I say that as far as Suresh Patel, then Talati of Hebatpur is concerned, he gave a statement that he is not having his signature in Pedhinama, that he has not prepared any such Pedhinama and after he has preferred a quashing petition before this Hon"ble Court and has made wrong allegations against me, after

giving this statement for reasons best known to Suresh Patel, he has also stated that if original Pedhinama is seen, he will be able to give further details of any of this Baldev @ Bhudar etc. and then thereafter, not cooperated with the investigation.

8. I say that the present Talati of Hebatpur namely Hetalben Chaudhari given the procedure as to how and under what procedure pedhinama is prepared and being shown the present disputed pedhinama she has stated that this is no way to prepare a pedhinama, this is not the method under which the pedhinama can be prepared, the details on the basis of which such pedhinama is prepared, that as far as names stated as aliases, affidavits are to be taken of all those persons, k date of death certificates are to be taken, identity cards are to be taken of the persons and that from the file it has not come on record that any such document is produced before the pedhinama is prepared, that witnesses to such pedhinama have to be of such an age who would have witnessed presence of such persons during their lifetime. I say that Talati of Ambli namely Urvashiben Vaghela has state that there is no revenue entry of heirs and legal representatives of Bhudar Raiji, that Ishwarchand Savchanddas since 1909 and thereafter, his heirs and legal representatives can only said to be owners of the land from the revenue records and other records available with the office of Land Records at Ambli and that at present the registered sale deed in favour of Dipakbhyai Nimbark, the complainant who can be said to be the owner and occupier of the land in question.

9. It is further submitted that the most important issue is that the original pedhinama is not produced by any of the parties, Babuji Shivaji Thakor and others on being asked for the original pedhinama, they have stated that they do not have original pedhinama and Ashok Dhanji Prajapati and Hasmukh Raval on being asked about the Pedhinama they have no knowledge about the Pedhinama and are not in possession of the original Phedhinama, on advocate Jinesh Jani being asked about the Pedhinama he has also not given the copy of the Pedhinam, in short none of the accused have given the original Pedhinama based on which the whole issue has started.

10. I say from the investigation carried so far it has come to our notice the age difference between the brothers i.e. Baldev @ Bhudar and Shivaji is almost 40 years which is next to impossible. The pedhinama has not been furnished by any of the accused and the statement of the present Talati of Hebatpur village clearly states that due procedure has not been followed in making this Pedhinama.

11. I say from the investigation so far carried out, there are sufficient evidence in the present case and if proper co-operation is rendered by the accused then we can reach to the root of this case. I pray before this Hon"ble Court that powers under Section - 482 of Criminal Procedure Code may kindly not be exercised and the quashing petitions filed by the accused may kindly be dismissed."

14. Having heard the learned counsel appearing for the parties and having

considered the materials on record, the only question that falls for my consideration is whether the F.I.R. should be quashed.

15. I have already stated the case of the prosecution and the role played by the accused persons as highlighted by the Investigating Officer in his affidavit-in-reply.

16. Before embarking on an evaluation of the rival submissions, it would be instructive to briefly notice the scope and ambit of the inherent powers of the High Court under Section 482 of the Cr.P.C.

17. Section 482 of the Cr.P.C. itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely: (i) to give effect to an order under the Cr.P.C.; (ii) to prevent an abuse of the process of Court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real and substantial justice for which alone the Court exists. Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, the Supreme Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction under Section 482 of the Cr.P.C. Though it is emphasised that exercise of inherent powers would depend on the facts and circumstances of each case, but, the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the Complaint or Charge-sheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged.

18. In one of the earlier cases in *R.P. Kapur v. State of Punjab* [, (2010) 9 SCC 368], the Supreme Court had culled out some of the categories of cases where the inherent powers under Section 482 of the Cr.P.C. 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 their 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."

19. In *Dinesh Dutt Joshi v. State of Rajasthan and Another* [, (2001) 8 SCC 570], while explaining the object and purpose of Section 482 of the Cr.P.C., the Supreme Court had observed thus:

"6..... The principle embodied in the section is based upon the maxim: *quando*

lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa case 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."

20. The Supreme Court in A. Ravishankar Prasad and Others (, 2009 AIR SCW 3942 : 2009 Cri LJ 3437) referring to several earlier decisions on the point, including R.P. Kapur v. State of Punjab (, AIR 1960 SC 866 : 1960 Cri LJ 1239); State of Haryana and Ors. v. Bhajan Lal and Ors. [, 1992 SCC (Cri) 426]; Janata Dal v. H.S. Chowdhary and Ors. [, (1992) 4 SCC 305]; B.S. Joshi and Ors. v. State of Haryana [, (2003) 4 SCC 675]; Nikhil Merchant v. CBI [, (2008) 9 SCC 677] etc. has reiterated that the exercise of inherent powers would entirely depend on the facts and circumstances of each case.

21. It has been further observed in A. Ravishankar Prasad case (supra):

"23...the inherent powers should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the 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 such magnitude that they cannot be seen in their true perspective without sufficient material."

22. It is very depressing to note that a practicing advocate, who could be said to be a member of a noble profession, is found to have been involved in such a fraud along with his office clerk. The Investigating Officer has projected him as the kingpin of the fraud. It is he who is said to have planned the whole operation of land grabbing with the aid of his Clerk Ashok Dhanjibhai Prajapati and his close relatives.

23. Having regard to the materials on record and the investigation carried out so far, I am of the view that no case worth the name is made out for quashing of the F.I.R. The investigation is at a very crucial stage and if the same is interfered by this Court, then the same would lead to a serious miscarriage of justice. The F.I.R. discloses commission of a cognizable offence with the necessary ingredients.

24. The only applicant, who deserves to be given relief, is Shrenikbhai Rikhavchand Shah (applicant of the Criminal Miscellaneous Application No. 16994 of 2015). So far as the said applicant is concerned, the Investigating Officer pointed out that it is he who actually unearthed the entire fraud. According to the Investigating Officer, nothing incriminating has been found against the applicant of the Criminal Miscellaneous Application No. 16994 of 2015. The only role

ascribed to the applicant of the Criminal Miscellaneous Application No. 16994 of 2015 is that he had authenticated the power of attorney on 29th October, 2010 under Section 33 of the Registration Act and accepted the documents of sale deed dated 24th January, 2011 under Sections 32 and 35 of the Registration Act and Rule 45 of the Bombay Registration Rules bona fide. He had not registered the sale deed under Section 60 of the Act. It is this applicant, who noticed the large scale fraud and reported immediately to his superior for verification of all the documents on the same day.

25. I deem fit to invite the notice of the Revenue Officers across the State to the provisions of the Registration Act, 1908 and few Government Resolutions in that regard.

26. Section 34(3)(1) and Section 34(3)(c) of the Registration Act, 1908 reads as under:

"34. Enquiry before registration by registering officer:

(1)

(2)

(3) The registering officer shall thereupon-

(a) Enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear."

27. Section 82 of the Registration Act, 1908 reads as under:

"Penalty for making false statements, delivering false copies or translations, false personation, and abetment

Whoever-

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act; or

(b)

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; or

(d)"

28. The Government Resolution dated 8th June, 2010 (at page 277 of the Criminal Miscellaneous Application No. 17557 of 2015) has been issued so as to curb the criminal activity of persons claiming to be the owners of the property of which they are not the actual owners, therefore, the Sub Registrar's of the State have been issued directions to look into the original documents before Registration.

29. The Government Resolution dated 6th October 2010 (at page No. 279 of the Criminal Application No. 17557 of 2015) has been issued with a further direction to the Registrars" that, before registering a document, the records namely, village form No. 6, 7/12 extracts, village form No. 8A, Index, Allotment letters, Share certificates, Sanad, etc should be seen/checked thoroughly by the Sub Registrar before Registration.

30. The Government Resolution dated 31st August, 2010/21st September, 2010 (at page No. 281 of the Criminal Miscellaneous Application No. 17557 of 2015) again provides for the instructions to stop the illegal activities of selling someone's property by giving directions to the Sub Registrars" that, in view of the provisions of the Registration Act, the document is not to be registered if the original document showing title of the property are not checked/produced and compared before the Registering authority.

31. The Government Resolution dated 23rd January, 2013 (at page No. 284 of the Criminal Miscellaneous Application No. 17557 of 2015) provides instructions to the Sub Registrars" to check the property cards, 7/12 extracts, etc before Registering a document.

32. Why I am saying so is because in the present case, the documents being village form No. 7/12 which were placed on record showed the names of the original owners of the land and not of the petitioners of the Criminal Miscellaneous Application No. 16116 of 2015 who claimed themselves to be the owners of the land in question and therefore on 10th September, 2012, the Deputy Collector directed not to register the document as the village form No. 7/12, the pedigree/pedhinama, power of attorney etc were required to be thoroughly checked.

33. Despite the above, an affidavit of the power of attorney holder, namely, Ashok Dhanji Prajapati (petitioner of the Criminal Miscellaneous Application No. 16128 of 2015) and the purchaser, namely, Hasmukh Prahlad Raval (petitioner of the Criminal Miscellaneous Application No. 15377 of 2015) to the effect that they shoulder the responsibility on behalf of all concerned was accepted and on the strength of such bogus affidavit, the sale deed was registered i.e. five days from the date of the directions issued by the Deputy Collector not to register the document.

34. On 18th December, 2015, the Collector directed that appropriate steps be taken against Shri H.G. Parmar and Shrenik Shah in view of the fact that

although the revenue records did not reflect the names of the alleged sellers, yet they proceeded to register the sale deed. On 13th August 2008, a departmental chargesheet was issued to Shri H.G. Parmar by his superior.

35. In the result, all the applications are rejected, except the Criminal Miscellaneous Application No. 16994 of 2015.

36. The Criminal Miscellaneous Application No. 16994 of 2015 is, hereby, allowed. The F.I.R. is ordered to be quashed so far as the applicant, namely, Shrenikbhai Rikhavchand Shah is concerned. Rule is made absolute qua the applicant Shrenikbhai Rikhavchand Shah.

37. The Revenue Officers, more particularly, the Sub Registrars across the State are directed to scrupulously follow the provisions of the Registration Act referred to above in paras 26 and 27, and also the Government Resolutions referred to above in paras 28, 29, 30 and 31. The negligence or dereliction of duty on the part of the officers concerned in the aforesaid regard shall be viewed very strictly.

38. Notice/Rule stands discharged in all other applications. The ad-interim order also stands vacated forthwith. The Investigating Officer shall proceed further with the investigation and see to it that the same is completed at the earliest in accordance with law. If any of the applicants fail to cooperate in the investigation, then he shall take appropriate steps available in law.

FURTHER ORDER

After the judgment is pronounced, the learned counsel appearing for the respective petitioners prayed for stay of the operation of the order and extension of interim order earlier granted.

For the reasons recorded above, the request is declined.