

(2017) 03 GUJ CK 0214
In the Gujarat High Court
Case No : 285 of 2014

Kairunben Jamaluddin Kadri & 7 others

APPELLANT

Vs

State Of Gujarat & 1 Another

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 468](#), [Section 156\(3\)](#), [Section 415](#), [Section 202](#) - Saving of inherent powers of High Court - Bar to taking cognizance after lapse of the period of limitation - Police officers power to Investigate cognizable case - Postponement of execution of sentence of death in case of appeal to Supreme Court - Postponement of issue of process
[Indian Penal Code, 1860](#), [Section 420](#), [Section 468](#), [Section 471](#), [Section 467](#), [Section 465](#), [Section 406](#), [Section 474](#) - Cheating and dishonestly inducing delivery of property - Forgery for purpose of cheating - Using as genuine a forged document - Forgery of valuable security, will, etc - Punishment for forgery - Punishment for Criminal breach of trust - Having possession of document described in Sec. 466 or 467, knowing it to be forged and intending to use it as genuine

Citation : (2017) 03 GUJ CK 0214

Hon'ble Judges : B.N. Karia

Bench : Single Bench

Advocate : Nasir Saiyed, Ee Saiyed, Dipal R. Ravaiya, K.P. Raval

Judgement

1. The present petitions are filed by the petitioners- accused under Section 482 of the Code of Criminal Procedure, 1973 ["CrPC" for brevity] for quashing and setting aside the complaint, being M. Case No. 1/2013 registered with Maliya Police Station, District: Junagadh for the offence punishable under Sections 406, 420, 465, 467, 468, 471, 474 of the Indian Penal Code and all other consequential proceedings arising therefrom, qua the present petitioners. 2. Criminal Misc. Application No. 285 of 2014 is preferred by the petitioners-original accused no. 1, 2, 4 to 9 and whereas Criminal Misc. Application No. 10896 of

2013 is filed by the original accused no.3 in the FIR dated 02.01.2013 launched by the respondent no.2- complainant. Since the facts being common, this Court (Coram: Mr. Justice A.J. Desai), by virtue of order dated 10th July, 2014 while granting interim relief in terms of Para 10(b) of the petition, ordered hearing of the proceedings together. 3. The facts leading to filing of the present petitions are as under; 3.1. That, the accused were having land at village Panakava, being survey No. 74. Out of that land, the accused no.3, himself and being a power of attorney holder of remaining accused, decided to sale the land admeasuring 42-16 gunthas, located on the western side of such land to the complainant on 13.07.2002 for a consideration of Rs. 2,00,000/- and after receiving Rs. 1,00,000/-, an agreement to sale was made on a non judicial stamp paper of Rs. 50/- and it was notarized before the Notary Public on 13.07.2002 at Sr. No. 401 and possession thereof was handed over to the complainant. 3.2. Thereafter, an agreement was made to sale a piece of land admeasuring 40.00 guntha, located on the middle part of the said land for a sale consideration of Rs. 1,80,000/- to the father of the complainant, viz., Gordhanbhai Parshottambhai Ramoliya. Out of that amount, after receiving a sum of Rs. 80,000/-, an agreement to sale was executed on a stamp paper of Rs. 50/- before the Notary Public on 13.07.2002 at Sr. No. 402 and possession thereof was handed over to the brother of the complainant. 3.3. It is alleged in the complaint that the complainant was ready and willing to get executed the sale deed, however, the accused persons were not doing so and were also trying to sale the said land to someone else, and therefore, the complainant filed a Regular Civil Suit with an injunction application on 28.10.2012 before the court of learned Civil Judge at Maliya Hatina, but later on, it was compromised between the accused persons and the complainant, and therefore, the Court below passed a consent decree. Nevertheless, to the shock and surprise of the complainant, the accused persons failed to execute sale deed in favour of the complainant, as per the order of the concerned Court, and on the contrary, got entries mutated on their names and in posted in their separate accounts also. When the complainant asked the accused to execute sale deed in their favour, they suddenly got excited on the complainant and told him that you may do anything, but we will not execute this land in your favour and issued threats that they shall sale such land to the headstrong persons and therefore, the complainant, his father and brother have filed an execution petition before the court of learned Civil Judge at Maliya Hatina. Thereafter, the complainant came to know that the accused persons have sold the land in question to other persons and therefore, the complainant, his father and brother approached the police to lodge a complaint, but police did not lodge it, and as a last resort, the complainant-respondent no.2 approached the concerned Court to lodge the impugned complaint. 4. Heard learned advocate Mr. Nasir Saiyed appearing for the petitioners, Mr. Dipal R. Ravaiya, learned advocate appearing for the respondent no.2 and learned APP Shri KP Raval for the respondent no.1- State. 5. It is submitted by Mr. Nasir Saiyed, learned advocate for the petitioners that it is crystal clear, rather very specific that a civil dispute of the year 2002 has intentionally and knowingly been converted into a criminal complaint, and

therefore, the same amounts to nothing, but a clear abuse of the process of law. He has further stated that Execution Application No. 5 of 2012 is pending before the concerned Civil Court, and therefore, the Civil case is given a colour of Criminal case. That, the complainant has not come out with clean hands and simply to rope all the family members; including petitioner no.1, who is on the verge of leaving this materialistic world has not been spared. That, if entire complaint is read as a whole, then it does not disclose any specific averment or ingredients of the Sections levelled against the present petitioners. Thus, in absence of specific averments/contentions, it can be safely submitted that there are no elements to link the present petitioners with the alleged offence and the impugned complaint is artificial and concocted. 6. It is further argued by learned advocate for the petitioners that as per the complaint produced on record, the alleged offence was committed at any point of time on 2nd May, 2007 and the complaint was lodged by the respondent no.2 on 2nd January, 2013, after passing of 6(six) years, approximately. There is a gross delay in lodging complaint by the respondent no.2. That, as averred in the complaint, the complainant had approached Maliya Hatina Police Station on 6th November, 2012, but complaint of the respondent no.2 was not registered because of civil nature of the dispute. That, on 28th October, 2012, a civil suit was filed by the respondent no.2 and within a period of 2 days, on 30th October, 2012, compromise was arrived at by and between the parties, resulting to drawal of a consent decree. That, the petitioners never appeared before the court of learned Civil Judge at Maliya Hatina, where the Execution Petition, being No. 5/2012 was pending. That, learned Judge of the Court was misguided by the respondent no.2. That, it reveals from the order that none of the parties remained present before the Civil Court at Maliya Hatina. That, on 13th April, 2013, a notice was issued on an application filed for condonation of delay caused in filing appeal against the decision in respect of Entry Nos. 671 and 749. That, learned Judicial Magistrate First Class at Maliya Hatina, mechanically and in casual manner, passed an order below the complaint by forwarding the complaint to PSI, Maliya Hatina Police Station for investigation under Section 156 (3) of the CrPC, which is a non-speaking order passed without application of mind on the part of the concerned Court. That, without any basis, the respondent no.2 made false allegations of cheating and forgery in her complaint. That, there is no averments made in the entire complaint as to who prepared the false document. Mere allegations of cheating or creating false document would not be sufficient to constitute a cognisable offence against the petitioners. There is a gross delay in lodging a complaint by the respondent no.2, which itself shows mala fide intention on the part of the complainant. He has relied upon the judgment of this Court in Criminal Misc. Application No. 16531/2011 with Criminal Misc. Application No. 17054/2011 in Criminal Misc. Application No. 16532/2011. That, the impugned complaint is nothing, but a sheer abuse of process of law and filed only with a view to harass and disturb the present petitioners; in particular, and their family members in general. That, the impugned complaint is nothing, but a pressure tactics and involves innocent persons of the society, who are merely

agriculturists. Ultimately, it was requested by learned advocate Mr. Nasir Saiyed for the petitioners to quash and set aside the complaint, being M. Case No. 1/2013 registered with Maliya Hatina Police Station, qua the present petitioners.

7. On the other side, Mr. Dipal R. Ravaiya, learned advocate appearing for the respondent no.2 strongly and strenuously opposed the submissions made on behalf of the petitioners and urged that after making inquiry under Section 202 of the Code, learned JMFC, Maliya-Hatina passed an order under section 156(3) CrPC directing PSI, Maliya-Hatina Police Station to investigate into the offence. No illegality is committed by the learned JMFC in passing an order for investigation. That, in the year 2007, another agreement to sale of the said land was executed by the present petitioners on the stamp paper of Rs. 50/-. That, however, consent decree was passed by the learned Civil Judge, Maliya-Hatina in Regular Civil Suit No. 308/2012, most of the petitioners were present before the Court, but they did not execute the sale deed in respect of the land in dispute in favour of respondent no.2; as agreed by them. That, a consent decree passed by the learned Civil Judge, Maliya-Hatina was never challenged by the present petitioners, though a revenue appeal is pending. That, the respondent no.2-complainant was promised by the present petitioners to execute the sale deed in her favour, as the power of attorney was in Gulf country and on his arrival in India, possession of the land in dispute was to be handed over to the complainant, and therefore, she waited on a promise given by the present petitioners. Hence, there is some delay in lodging the complaint by her. There is no delay on the part of respondent no.2 in lodging the complaint, after such a period and sufficient explanation is rendered by her. That, proceedings of mutation of entry in the revenue record is pending before the Revenue authorities. The petitioners are involved in an offence, as alleged by the respondent no.2 in her complaint. Learned advocate further argued that the High Court cannot entertain into disputed questions of fact under Section 482 CrPC and need to exercise powers vested under Section 482 CrPC with great deal of caution, even though defence of accused appears to be plausible. Ultimately, it was requested to dismiss the present petition.

8. Learned APP Mr. KP Raval appearing for the respondent no.1-State has supported the arguments advanced by the learned advocate Mr. Dipal R. Ravaiya appearing for the respondent no.2 and argued that since investigation has not yet started and no evidence is collected by the investigating agency, the entire facts are incomplete and in such circumstances, it can be said that no offence is committed by the petitioners. That, the order passed by the learned JMFC under Section 156 (3) CrPC and its" legality cannot be decided at this stage, as investigation is yet to proceed. That, though a decree is passed by the learned Civil Judge (J.D.), wherein a consent is given by the petitioners, however, they have not executed a sale deed of the land in question. Prima facie, all of the petitioners are involved in the offence, as per the complaint and therefore, this court ought not to exercise powers in favour of the petitioners under section 482 CrPC. Ultimately, it was requested by learned APP to dismiss the present petition.

9. Having considered the facts of the case, rival submissions made by the learned advocates for the respective parties and

documentary evidence placed on the record by either side, it appears that the complainant-respondent no.2 herein came into contact with the petitioners and entered in an agreement to sale of the land of revenue survey No. 74 of Khed Khata No. 167 for a consideration of Rs. 2,00,000/- on 13.07.2002. Another agreement to sale of the said survey number at Pankuva came to be executed by one Mr. Gordhanbhai Parsottambhai Ramoliya, who happens to be husband of the respondent no.2, with the present petitioners for a consideration of Rs. 1,80,000/-. Another agreement to sale of the agricultural land of the same survey no. 74 of the same village came into entered by one Shri Haribhai Gordhanbhai Ramoliya with the present petitioners for a consideration of Rs. 1,80,000/-. All the three agreements to sale were executed by power of attorney namely Salimuddin Jamaluddin Kadri on behalf of the petitioners and all of them were notarized at Manavadar. It appears that the accused no.3 in FIR(Petitioner of Criminal Misc. Application No. 10896/2013) Salimuddin Jamaluddin Kadri is the power of attorney of the remaining petitioners, as per the agreement to sale executed on 13.07.2002. As per the averment made in the agreement to sale, physical possession of the land was handed over to the purchasers and sale deed was to be executed by the sellers, in future. Thereafter, it appears that the sale deed was not executed by the present petitioners or the power of attorney in favour of the three purchasers, including the respondent no.2, who filed a Civil Suit No. 308/2002 before the court of learned Civil Judge at Maliya-Hatina on 28th October, 2002. It also appears that in the said civil suit, compromise was arrived at by and between the parties, which was placed before the court and decree was drawn by the Court on 30.10.2002, after passing of two days only from the date of institution of the civil suit. As averred in para 3 of the decree, physical possession of the land was handed over to the purchaser by the petitioners on the date of execution of agreement to sale. The petitioners have further undertaken, as per the decree passed by the learned Civil Judge(J.D.), Maliya Hatina, to execute a sale deed in favour of the purchasers. This decree was passed by the learned Civil Judge in presence of the learned advocates of the respective parties. It appears that none of the parties, either the plaintiff or the defendant or the power of attorney of the petitioners, were present before the Civil Court at Maliya-Hatina. As per the arguments advanced by learned advocate appearing for the petitioners that one of the petitioners, namely, Salimuddin Jamaluddin Kadri, against whom also, criminal complaint is lodged by the respondent no.2 and civil proceedings were initiated, was in Gulf country, at the relevant point of time, when the alleged incident happened. This fact is not denied by the respondent no.2 by filing an affidavit. It also appears that the same Salimuddin Jamaluddin Kadri also preferred another petition, being Criminal Misc. Application No. 10896/2013, for quashing and setting aside the impugned complaint lodged by the respondent no.2. It also appears from the averments made in the complaint as well as documentary evidence produced on the record that a civil dispute is converted by the respondent no.2 in a criminal complaint by implicating all the petitioners in the offence, so as to pressurize the petitioners. 10. Similar issue was decided by this Court (Coram: Hon''ble Mr.

Justice JB Pardiwala) in Criminal Misc. Application No. 11031/2014, wherein a complaint was registered against the petitioners for the offence punishable under sections 406, 420, 120B read with Section 34 of the Indian Penal Code. It is observed therein as under; "The offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients. In order to constitute a criminal breach of trust (Section 406 IPC). 1) There must be entrustment with person for property or dominion over the property, and 2) The person entrusted : a) dishonestly misappropriated or converted property to his own use, or b) dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation - i) any direction of law prescribing the method in which the trust is discharged and ii) of legal contract touching the discharge of trust (see: S.W.P. Palanitkar v. State of Bihar, (2002)1 SCC 241) : (AIR 2001 SC 2960). Similarly, in respect of an offence under section 420 IPC, the essential ingredients are : 1) deception of any person, either by making a false or misleading representation or by other action or by omission; 2) fraudulently or dishonestly inducing any person to deliver any property, or 3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see: Harmanpeet Singh Ahluwalia v. State of Punjab, (2009)7 SCC 712 : (2009) Cr.L.J. 3462 (SC)) Further, in both sections, mens rea i.e. intention to defraud or the dishonest intention must be present from the very beginning or inception without which either of these sections cannot be invoked. In my view, the plain reading of the First Information Report fails to spell out any of the aforesaid ingredients noted above. I may only say with a view to clear a serious misconception of law in the mind of the police as well as the courts below that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it could not be said that the accused has also committed the offence of cheating as defined and explained in Section 415 of the IPC, punishable under Section 420 of the IPC. Every act of breach of trust may not be resulted in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but any breach of trust with a mens rea gives rise to a criminal prosecution as well. It has been held in Hart Prasad Chamaria v. B.K. Surekha and others, reported in 1973(2) SCC 823 as under : "We have heard Mr. Maheshwarit on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Indian Penal Code. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Indian Penal Code. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35.000/- There is also nothing to indicate that the respondents

induced the appellant to pay them Rs. 35.000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating." To put it in other words, the case of cheating the dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, the person who comes into possession of the movable property receives it legally, but illegally retains it or converts it to his own use against the terms of the contract. Then the question is, in a case like this, whether the retention is with dishonest intention or not. Whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating are fine one. In case of cheating, it depends upon the intention of the accused at the time of inducement, which may be judged by a subsequent conduct but for this the subsequent conduct is not the sole test but mere breach of contract which cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is his intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence after breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. But the offence, i.e. the offence of breach of trust and cheating involve dishonest intention but they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of entrustment. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender practices fraudulent or dishonest to induce with another person to deliver the property. In such situation, both the offences cannot coexist simultaneously. I may quote with profit a decision of the Supreme Court in the case of Nageshwar Prasad Singh alias Sinha v. Narayan Singh, AIR 1999 SC 1480. In the said case, the allegation of the prosecution was that an agreement was signed between the complainant respondent and the appellant whereby some land was agreed to be sold by the appellant to the complainants on a consideration, and allegedly a part thereof was paid as earnest money, the balance being payable in the manner indicated in the deed. The most important term in the deed was that possession of the plot would stand transferred to the complainants and possession in fact was delivered to the complainants over which they made certain constructions. The complaint was laid

on the basis that the appellant had cheated the complainants of the sum of money they had paid as earnest money as his subsequent conduct reflected that he was not willing to complete the bargain for which the complainants had to file a suit for specific performance which was pending in the civil court. Held, that latter part of illustration (g) to Section 415, I.P.C. illustrates that at the time when agreement for sell was executed, it could have, in no event, been termed dishonestly so as to hold that the complainants were cheated of the earnest money, which they passed to the appellant as part consideration and possession of the total amount involved in the bargain was passed over to the complainant/respondent and which remained in their possession. Now it is left to imagine who would be interested for dealing the matter for completing the bargain when admittedly the complainants have not performed their part in making full payment. The matter was, therefore, before the civil court in this respect. The liability, if any, arising out by breaching thereof was civil in nature and not criminal. Accordingly, the appeal was allowed and complaint proceedings were quashed." 11. It is pertinent to note that alleged agreement to sale was executed by the petitioners on 13.07.2002 and after filing of a Civil Suit in the year 2002 as well as Execution Petition in the year 2012, present complaint is lodged by the respondent no.2 in the month of January, 2013 i.e., after passing of approximately eleven years. No satisfactory explanation of delay in lodging the complaint has been given by the respondent no.2 in her complaint. Furthermore, before lodging this complaint, before the court of learned JMFC at Maliya-Hatina, the respondent no.2 allegedly approached local Police authority on 6th November, 2012, but no attention appears to have been given by the police authority, for whatever the reasons. The respondent no.2, thereafter, filed a complaint before the court of learned JMFC at Maliya-Hatina. Delay in lodging an FIR also assumes significance, in the facts of the present case. In the cited judgment, Hon"ble High Court has further observed as under: "Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case, there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. [vide: Kishan Singh (D) through L.Rs. v. Gural Singh and others, 2010 Cri.L.J. 4710]. In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases, the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before a civil court may initiate criminal proceedings just to harass the other side with a malafide intention or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a

weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (vide : Kishan Singh (D) through L.Rs. v. Gurpal Singh and others, 2010 Cri.L.J. 4710]." 12. In Kishan Singh (dead) thr. Lrs. v. Gurpal Singh & Ors. reported in AIR 2010 SC 3624, Hon"ble Apex Court, while dealing with a case of inordinate delay in launching a criminal prosecution, has held as under; "In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Vide : Chandrapal Singh & Ors. v. Maharaj Singh & Anr., AIR 1982 SC 1238; State of Haryana & Ors. v. Ch. Bhajan Lal & Ors., AIR 1992 SC 604; G. Sagar Suri & Anr. v. State of U.P.& Ors., AIR 2000 SC 754; and Gorige Pentaiah v. State of A.P. & Ors., (2008) 12 SCC 531)." 13. Here, this Court would like to mention that Section 468 CrPC., which places an embargo upon the courts from taking cognizance of an offence, after expiry of limitation period provided therein. Section 469 prescribes when the period of limitation begins. In the instance case, as per the complaint lodged by the respondent no.2, alleged offence was committed in the year 2007, however, she had filed her complaint in the year 2013, and before that, civil proceedings were initiated by her and a compromise was also arrived at. Further more, as the matter is purely civil in nature, in view of the fact that civil proceedings with respect to the very same subject matter was initiated by the respondent no.2 before the Civil court at Maliya Hatina, and a decree was passed by the court, as argued by learned advocate for the respondent no.2. Moreover, the alleged claim relates to the year 2002. Therefore, the complaint lodged after lapse of 11 years is barred by provision of Section 468 CrPC. Therefore also, this case is squarely covered by the observations made in case of Kishan Singh (Supra), and thus, the proceedings must be labeled as nothing more than an abuse of the process of the court, particularly in view of the fact that, civil proceedings have already been initiated by the respondent no.2, wherein compromise was arrived at and by virtue of which, decree was passed. 14. Further, it appears that after

lodgment of the complaint by the respondent no.2 before learned JMFC, Maliya-Hatina, the court has passed an order on 1st January, 2013, directing PSI of Maliya-Hatina Police Station to investigate into the offence under Section 156 (3) CrPC. Learned advocate Mr. Dipal Ravaiya for the respondent no.2 has argued that before passing the said order, learned JMFC has applied his mind and made inquiry under section 202 CrPC, but nothing is placed on record by the respondent no.2 to show that such inquiry was ever made by learned JMFC under section 202 CrPC. Further, order under section 202 CrPC and under section 156(3) CrPC are quite different. Learned advocate appearing for the respondent no.2 is not in a position to explain about the order passed by the learned JMFC under section 202 CrPC or had produced the same before passing of order under section 156 (3) CrPC by the learned JMFC. It appears that there is lack of application of mind by the learned Judicial Magistrate, while exercising the said powers. He must remain vigilant with regard to nature of allegations made in the application and ought not to have issued directions, without proper application of mind. In a proper case, the Magistrate can verify the truth and veracity of allegations made, having regard to the nature thereof. Further more, it is now mandatory in Section 156 (3) CrPC, application to be supported by an affidavit. Power under section 156 (3) CrPC cannot be invoked by litigant at his own whim to harass others. It can be invoked only by a principled and really aggrieved citizen approaching the Court with clean hands. This view is expressed by the Apex Court in the case of Priyanka Srivastava v. State of Uttar Pradesh & Ors. reported in 2015(6) SCC-287. 15. It is not material for this Court to consider the arguments of learned advocate appearing for the respondent no.2 that same land was sold by the petitioners to third party, later on, as it is not a disputed fact involved in the instance case. 16. In such facts and circumstances, M. Case No. 1/2013 filed by the respondent no.2 before the court of learned JMFC, Maliya-Hatina, on 02.01.2013, would not be maintainable. Learned Magistrate concerned has committed a grave error by entertaining the said case and wrongly took cognizance by passing order under section 156 (3) CrPC. 17. In view of the aforesaid facts, order dated 01.01.2013 passed by the learned JMFC, Maliya-Hatina in M. Case No. 1/2013 deserves to be quashed and is accordingly quashed and set-aside with all consequential proceedings, qua the petitioners. 18. Criminal Misc. Application No. 285/2014 and Criminal Misc. Application No. 10896/2013 are hereby allowed, qua the petitioners. Rule nisi issued in each case is made absolute to the afore stated extent. However, there shall be no order as to costs. D.S. Permitted. Application allowed.