

(2011) 08 GUJ CK 0029

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 2780 of 2011

Prakash Ramchandra Barot and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 482

Penal Code, 1860 (IPC) — Section 120B, 186, 405, 406, 415

Citation : (2011) 3 GLH 211

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

Bench : Single Bench

Advocate : M.B. Gandhi and Mr. Chinmay M. Gandhi s 1-5, for the Appellant; Krina Calla, App for Respondent 1, Mr. B.B. Naik with Mr. Rajesh K. Savjani for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

Mr. J.B. Pardiwala, J.—By way of this application u/s 482 of the Code of Criminal Procedure (for short, "the Code"), the petitioners - original accused persons seek to invoke inherent powers of this Court, praying for quashing the F.I.R. lodged at Kalol Police Station vide CR-I No.26/2011 for the offences punishable under Sections 406, 420, 465, 467, 468, 471, 447, 186, 120B and 504 of IPC.

2. The case of the prosecution in brief can be summarised as under :-

(1) On 16th February 2011 respondent No. 2 - the first informant lodged a report with Kalol Police Station alleging that since past two years he is serving as a Secretary in a society called Blue Diamond Cooperative Housing Society Limited, which is situated in the sim of village Sanavad.

(2) It is stated that the Society was registered on 16th June 1982 in the office of the District Registrar, Mehsana. It is further stated that the Society owns land bearing Survey Nos.113/3, 114, 123/1, 124, 125/1, 125/2 and 125/3. All these

survey numbers were ordered to be consolidated vide Order No.3203/1999 dated 18th September 1999 passed by the Mamlatdar, Kalol. The consolidated area admeasures about 8-Hectares-49-Aare-84-Gunthas. The consolidated survey number/block number of the land in question is 113/3.

(3) It is further stated in the FIR that the land in question is vacant as no construction has been put up so far. It is alleged that at the relevant point of time the owners of the said land had executed registered sale deed in favour of the Society after accepting full sale consideration. Since then, the land is running in the name of the Society in the records of the Panchayat.

(4) It is alleged in the FIR that the Society apprehended some problem with respect to the land bearing Survey No. 123/1 at the end of the original owners in collusion with the accused persons herein. For this reason, the Society thought fit to institute Regular Civil Suit No. 19/1996 in the Court of learned Civil Judge, Kalol on 25th January 1996 for injunction restraining the original owners of the land and the accused persons herein from disturbing the possession of the Society. It appears as per the FIR that initially order of status quo was passed by the Civil Court on 6th March 1998. It is further stated in the FIR that the original owners and the accused persons also claimed right, title and interest over Survey No. 123/1 by filing Regular Civil Suit No. 166/1996 in the Court of learned Civil Judge, Kalol. It is further averred in the FIR that the original owners and the accused persons prayed for injunction below Application Exh.5, which was refused by the Civil Court. It is alleged that in spite of this position the original owners and the accused persons, in Company of some antisocial elements, entered into the land and for this reason the Society thought fit to get the land measured through DILR, Gandhinagar after making payment of the requisite fee of Rs.6,600=00.

(5) On 16th February 2011 the members of the Society tried to get the land measured with police protection and at that point of time accused No. 1 herein raised an objection that the Society cannot get the land measured through DILR as they are not the owners of the land but accused Nos.1 and 2 are the true owners of the land. It is further alleged that accused Nos.1 and 2 got a registered sale deed executed on 6th September 1995 with respect to the disputed land from the original owners i.e. accused Nos.4 and 5. It is the case of the first informant that this sale deed dated 6th September 1995 is a bogus sale deed. It is alleged that earlier there was already a sale deed executed in favour of the Society and for the same land on 6th September 1995 accused Nos.1 and 2 got a registered sale deed executed in their favour from the original owners, and thereby, the Society has been put to loss and the original owners of the land have thereby committed criminal breach of trust.

(6) It is in this background of the entire case that respondent No. 2, as a Secretary of the Society, lodged FIR with Kalol Police Station for the offences enumerated above.

3. I have heard learned Advocate Mr.Chinmay M.Gandhi appearing for the accused applicants, Mrs.Krina Calla, learned APP appearing for the State and Mr.B.B.Naik, learned senior Counsel appearing with Mr.Rajesh Savjani for respondent No. 2 - original first informant.

4. Learned Advocate Mr. Gandhi appearing for the accused applicants put forward the following contentions :-

(1) Plain reading of the FIR fails to disclose commission of any cognizable offence.

(2) None of the ingredients to constitute the offences punishable under Sections 406, 420, 465, 467, 468, 471, 447, 186, 120B and 504 of IPC are spelt out on plain reading of the FIR.

(3) He further submitted that the entire dispute is of a civil nature and both the sides are before the Civil Court with their respective civil suits past almost more than 14 years.

(4) He further submitted that both the suits have been ordered to be consolidated and are being heard together by the Civil Court, Kalol and the hearing of both the suits has been now fixed i.e. for recording of the cross-examination of the plaintiff so far as the Regular Civil Suit No. 166/1996 filed by the accused applicants herein is concerned.

(5) He further submitted that both the suits are filed in relation to the land bearing Revenue Survey No. 123/1. He further submitted that the dispute substantially is with regard to the right, title and interest over the land in question i.e. Revenue Survey No. 123/1.

(6) Learned Advocate further submitted that there is no forgery in the present case as alleged by the first informant. As a matter of fact, what is alleged in the FIR is that the sale deed executed by the original owners in favour of accused Nos. 1 and 2 is a false document within the meaning of Section 464 of the Code. He submitted that even assuming for a moment that the original owners could not have executed the sale deed in favour of accused Nos.1 and 2 as there was already a sale deed earlier executed in favour of the Society by itself will not render the document a false document because there is no dispute as regards the fact that the sale deed has been executed by the original owners claiming to be the true owners of the property in question. He also invited the attention of the Court to the fact that on 30th September 1982 two separate registered sale deeds were executed by the owners of Survey No. 123/1 in favour of the Society and Revenue Entry Nos.711 and 712 came to be mutated in the record of rights in this regard. However, he further submitted that on 19th November 1983, the Mamlatdar and ALT, Kalol set-aside the sale on the ground that the same was in breach of the provisions of Section 63 of the Bombay Tenancy and Agricultural Lands Act (for short, "the Tenancy Act") and also cancelled the Revenue Entry Nos.711 and 712 which were mutated in the record of rights.

(7) He further submitted that since the FIR fails to disclose commission of any

cognizable offence and the entire dispute is purely a civil dispute, police should not be permitted to investigate such an FIR as it would amount to abuse of process of law and when an FIR fails to disclose commission of any cognizable offence, then the police would not have the jurisdiction to investigate such an FIR. He, therefore, prayed that the FIR deserves to be quashed to prevent abuse of process of law.

5. Per contra, learned senior Counsel Mr.B.B.Naik appearing with Mr.Rajesh Savjani appearing for respondent No. 2 - original first informant opposed the prayer and submitted that there is a prima facie case against the accused applicants and the police must be permitted to proceed with the investigation and file an appropriate report before the concerned Court. He further submitted that some facts have been suppressed by the accused applicants. He submitted that vide order dated 20th December 1989, the Mamlatdar and ALT, Kalol dropped the proceedings initiated u/s 84-C of the Tenancy Act. He further submitted that the order of the Mamlatdar dated 19th November 1983 declaring the sale transaction between the original owners and the Society in violation of Section 63 of the Tenancy Act was challenged by the Society before the Prant Officer, Mehsana vide Appeal No.25/1996 and the Prant Officer allowed the Appeal and set-aside the order dated 19th November 1983.

6. He further submitted that the accused applicants herein challenged the order dated 29th October 1986 passed by the Prant Officer before the Collector, Mehsana by way of Revision Application No.22/1996 and the Collector, vide order dated 3rd September 1986, rejected the Revision Application.

7. He further submitted that the original owners could not have executed a sale deed in favour of accused Nos.1 and 2 because the original owners had already executed a sale deed in favour of the Society way back in the year 1982 and though the sale in favour of the Society was found to be in violation of the provisions of Section 63 of the Tenancy Act, the sale has been now validated by the revenue Authorities. He further submitted that the FIR discloses commission of cognizable offences and necessary ingredients are also spelt out. Learned Counsel prayed that this Court may not exercise its inherent powers u/s 482 of the Code to quash the FIR.

8. Learned APP appearing for the State submitted that since the police is investigating into the matter, this Court may not quash the proceedings in exercise of inherent powers u/s 482 of the Code. She further submitted that in the event if the police comes to a conclusion that no case is made out, the police will file appropriate report in this regard.

9. Having given my anxious thoughts and considerations to the respective contentions of the rival parties, I am of the view that the Application preferred by the accused applicants, praying for quashing the FIR, merits consideration for the reasons which I shall record hereinafter.

10. 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 u/s 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.

11. 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 u/s 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.

12. 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.

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

... Jurisdiction u/s 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 u/s 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.

14. 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.

15. 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.

16. 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.

17. It is an undisputed fact that both the sides are before the Civil Court since the year 1996. There are cross suits which are ordered to be consolidated and the Civil Court is already seized of the matter. I find that the entire dispute is with regard to the right, title and interest over the land bearing Survey No. 123/1. Who is the actual owner of the land in question and who should be declared the true owner of the land is the principal question, which Civil Court can only answer after deciding the respective rights of the parties. What is important is, as to whether any offence is said to have been committed even if

the entire FIR is accepted as it is. It is a settled law that if the FIR fails to disclose commission of any offence, then it deserves to be quashed. Otherwise, it will amount to abuse of process of law. In the FIR, it is alleged that the sale deed of the year 1995 executed in favour of accused Nos.1 and 2 by the original owners is a bogus sale deed, and thereby, the accused applicants have committed an offence of forgery. I do not understand on what basis this contention has been put forward. It is not in dispute that the sale deed has been executed by the original owners with their genuine signatures. What is disputed is the right, title and interest of the original owners to execute the sale deed for the second time in favour of accused Nos.1 and 2. This by itself will not render the sale deed of the year 1995 a false document within the meaning of Section 464 of the Code so as to constitute offences punishable under Sections 465, 467, 468, 471 of IPC. The law in this regard is now very 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 u/s 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.

18. There is one more important aspect which I would like to state here and that is, that at the time when the sale deed was, executed in favour of accused Nos.1 and 2 by the original owners i.e. in the year 1995, the sale transaction of 1982 was already declared to be hit by the provisions of Section 63 of the Tenancy Act. It is not clear and not explained by the first informant as to how the order dated 19th November 1983 declaring the sale in favour of the Society as invalid was

challenged in the year 1996, though the sale has been validated subsequently. But, when the sale deed in favour of accused Nos.1 and 2 was executed, it is perhaps clear that the order of the Mamlatdar and ALT dated 19th November 1983 was very much in force though the proceedings u/s 84-C of the Tenancy Act may have been dropped in the year 1989.

19. I am also not able to understand as to how the first informant conceived the idea of alleging that the sale deed of 1995 in favour of the accused applicant Nos.1 and 2 is a forged sale deed. It may be open for him to say that the sale of 1995 is an invalid sale and this is exactly what he has said in the civil Suit preferred against the accused -applicant Nos.1 and 2 and the other persons. In the civil Suit preferred 14 years back, the same sale deed is under challenge, and at no point of time, the first informant has said that it is a sale deed which is a forged sale deed.

20. In any view of the matter, it appears that both the sides may be right in their own way so far as the title of the property is concerned. However, the title can be decided only by the competent Civil Court and both the sides are already before the Civil Court with their respective suits.

21. All I am required to determine in this Application is as to whether the investigation should be permitted to proceed or not. I am of the view that when the entire matter revolves around the right, title and interest in the subject land and when the parties are already before the Civil Court past 14 years and the revenue proceedings have also been undertaken, continuation of such a prosecution will definitely amount to gross abuse of process of law.

22. Assuming for a moment, as alleged by the first informant, that accused Nos.1 and 2, in Company of other persons, obstructed the DILR Authorities to get the land measured by coming at the site, will by itself not constitute an offence of "criminal trespass". If a person bonafidely believes that he is the owner of the land, he has got all right to come and object saying that the land belongs to him and why should the DILR measures the land at the instance of other party also claiming to be the owner of the land.

23. 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 u/s 415 punishable u/s 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.

24. I may now consider whether the allegations in the complaint make out a case of "criminal breach of trust" as defined u/s 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".

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.

25. 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.

26. 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 u/s 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 u/s 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.

27. 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.

28. 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.

29. 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.

30. 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 u/s 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....

31. 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.

32. 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.

33. In the result, this Application is allowed. The FIR lodged with Kalol Police Station vide CR-I No.26/2011 is hereby ordered to be quashed. Rule made absolute.

34. Before parting, I deem it fit and proper to direct the learned Civil Judge, Kalol to take up both the Civil Suits i.e. Regular Civil Suit No. 19/1996 as well as Regular Civil Suit No. 166/1996 for hearing, and if necessary, on day-to-day basis so that the right, title and interest in the disputed land can be decided, which is the root cause of all the problems which have cropped up so far.

35. I am told that the recording of evidence is already in progress. However, still, I direct the concerned Civil Judge, Kalol to see that both the suits are finally disposed of with judgments, on or before 31st December 2011 and report about the disposal of the same to this Court.