

(2015) 09 RAJ CK 0032

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 2512 of 2014

Rajendra Kumbhat and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 154(3), 156(3), 250

Penal Code, 1860 (IPC) — Section 120-B, 405, 406, 420, 464

Citation : (2015) 09 RAJ CK 0032

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : M.S. Singhvi, Senior Advocate assisted by Nadish Singhvi, for the Appellant; S.K. Vyas, Government Advocate assisted by Vikram Rajpurohit, Public Prosecutor, Advocates for the Respondent

Judgement

Vijay Bishnoi, J—This criminal misc. petition under section 482 CrPC has been filed by the petitioners with a prayer for quashing the FIR No. 222/2014 dated 22.09.2014 of Police Station, Shashtri Nagar, Jodhpur for the offences punishable under sections 406, 420, 464, 467, 471 and 120-B IPC.

2. Brief facts of the case are that respondent No. 2 filed a written complaint in the Court of Metropolitan Magistrate No. 7, Jodhpur Metropolitan and the said complaint was forwarded by the concerned Magistrate for investigation under section 156(3) CrPC, which resulted into lodging of the impugned FIR.

3. In the complaint, respondent No. 2 has alleged that he and the petitioners are known to each other. In March, 2014, the petitioners approached him and asked that they entered into a transaction for purchasing a big land in village Pal, District Jodhpur and for that purpose, they need some money for a period of one or two months, upon which the respondent No. 2 agreed, and on 03.03.2014 and 04.03.2014, he advanced a sum of Rs. 1 crore each, total Rs. 3 crore as loan to the petitioners and the petitioners had agreed to pay the interest on the said

loan amount at the rate of 24% per annum. It is further contended in the complaint that on 25.03.2014 when the petitioners were in need of more money in relation to land transaction, the complainant further advanced Rs. 2 crores through RTGS to one Pukhraj Sargara on their instructions. It is contended in the complaint that when respondent No. 2 had demanded interest amount for the month of March on the loan amount, the petitioners assured to pay the same at the earliest, however, when the petitioners did not pay the interest amount despite repeated requests, some doubt was created in the mind of the complainant and when he warned the petitioners to take action, they approached him and informed that land transaction done by them has not been completed and, therefore, they are not in a position to pay the interest amount. Upon this, the respondent No. 2 insisted them to pay the interest amount any how, then the petitioners offered to sell some part of the land, which they purchased, and assured him that they are ready to sell the land to him on the same cost, on which they had purchased it from the original owners. It is alleged that though for quite some time, the respondent No. 2 did not agree with the offer of the petitioners but due to constant pressure of the petitioners and looking to the situation that the interest amount would not come, he agreed to enter into an agreement to purchase some part of the land and for that purpose, the petitioners executed an agreement in favour of him and his wife on 03.06.2014. The agreement dated 03.06.2014 is in relation to 19% of share in the land and the money paid to the petitioners was shown as consideration and it was also agreed that after making the payment to the original owner, the land would be sold and respondent No. 2 would get good profit.

4. It is stated in the complaint that as per the agreement, it was also agreed that if on any count, the earlier agreement executed between the petitioners and the original owner is cancelled and resulted in any loss, then the same would be suffered by the petitioners only and the complainant and his wife would not be responsible for any loss and the petitioners would either give them piece of land or would return the money.

5. It is alleged that the petitioners had not demanded the balance of money from the respondent No. 2 as per the terms of agreement dated 03.06.2014 and also not informed him about the progress in the land transaction between the petitioners and original owners. Looking to these circumstances when the respondent No. 2 asked the petitioners to get the deed executed in their favour from the original owners as per the agreement dated 03.06.2014, they deferred the same on one or other excuse and at this point of time, some doubts were again cropped in the mind of respondent No. 2, then he issued a notice to the petitioners on 01.07.2014 and asked them to get the deed registered in their favour from original owners as per the agreement dated 03.06.2014 and also asked them to furnish the copy of the agreement entered between the petitioners and the original owners. It is alleged that despite receipt of the notice, the petitioners never replied the same nor contacted him personally or on telephone and, therefore, they had intention to misappropriate the amount of Rs.

5 crores by deceitful means. It is also alleged in the complaint that on account of indifferent behaviour of the petitioners, the respondent No. 2 contacted with one Ruchir Parekh son of one of the original owners and informed him about the sequence of events. However, after hearing from Ruchir Parekh, the respondent No. 2 was shocked because he informed him that the petitioners were not authorized to sell the land involved in the transaction and the agreement executed between the original owners as well as the petitioners had already been cancelled in the month of May and notice of this effect had already been served upon the petitioners to which they had also filed reply. It is alleged that after hearing this, the respondent No. 2 was shocked and for the first time, he came to know that the petitioners, despite having knowledge of the fact that they cannot sell the land to any other person as per the terms of agreement entered between them with the original owners and despite knowing that the said agreement has already been cancelled, had executed an agreement with him and his wife and misappropriated the amount of Rs. 5 crores. It is alleged that in view of the fact that the agreement entered into between the petitioners and the original owners was already cancelled and the petitioners have no authority to execute any agreement, they have executed the agreement dated 03.06.2014 with the intention to misappropriate the money advanced to them. It is further contended that the complainant again sent a notice to the petitioners through advocate and prayed for returning the amount advanced to them with compensation. However, in the reply to the said notice, the petitioners have contended that the agreement entered between them and the original owner still subsists and this fact itself is sufficient to prove that the petitioners have committed the offences as alleged in the complaint. It is further contended that the petitioners have entered into a criminal conspiracy and cheated the respondent No. 2 and his wife by preparing false documents and committed misappropriation of amount advanced to them, therefore, they are entitled for punishment.

6. Assailing the impugned FIR, learned counsel for the petitioners have submitted that the petitioners entered into an agreement with Lata Parekh, Ramesh Parekh and Pukhraj Sargara to purchase a big piece of land at village Pal and for that purpose, an agreement was executed on 10.02.2014 between the petitioners and the above named persons. The respondent No. 2 was very well aware about the said agreement dated 10.02.2014 and immediately after execution of the same had contacted the petitioners and shown his inclination to become partner in the project of land and pursuant to that, entered into an oral agreement to invest 19% of the money in lieu of 19% share in the land. The said oral agreement was made on 28.02.2014 and the respondent No. 2 had paid Rs. 5 crores on 03.03.2014, 04.03.2014 and 25.03.2014. It is contended that out of Rs. 5 crores, amount of Rs. 2 crores was paid to one of the original owners Pukhraj Sargara on 25.03.2014. It is argued that if the respondent No. 2 was not aware about the agreement dated 10.02.2014 entered into between the petitioners, Lata Parekh, Ramesh Parekh and Pukhraj Sargara, there was no

occasion for him to make payment of Rs. 2 crores to Pukhraj Sargara on mere asking of the petitioners. It is also contended that the story of the respondent No. 2 of advancing loan to the petitioners is also falsified from the bare reading of the notice dated 01.07.2014, which is also referred in the FIR, wherein there is no mention or even whisper about advancement of any loan to petitioners. It is also argued that the contention of the respondent No. 2 regarding the execution of the agreement between him, his wife and the petitioners on 03.06.2014 is also not correct because the said agreement was executed only on 10.04.2014. It is contended that had the agreement been executed on 03.06.2014, the respondent No. 2 would have mentioned this fact in the notice dated 01.07.2014. It is contended that the allegation of the respondent No. 2 of advancing loan to the petitioners is afterthought and levelled for first time in second notice only with the intention to give criminal cloak to a civil dispute.

7. Learned counsel have further argued that the allegation of the respondent No. 2 that he entered into the agreement with the petitioners to purchase 19% of land is also false because from bare reading of agreement executed between the petitioners and respondent No. 2 and his wife, it is clear that by the said agreement, partnership of respondent No. 2 and his wife was created and it was agreed that after completion of deal with original owners and the petitioners, they would sell the land together. It is argued that theory of advancement of loan and purchase of land through agreement put forwarded by the respondent No. 2 in the complaint, on the basis of which the impugned FIR is lodged, is concocted and afterthought and the allegations levelled by the petitioners are absurd and inherently improbable, therefore, the impugned FIR is liable to be quashed and set aside.

8. Learned counsel for the petitioners have further argued that the dispute between the petitioners and the respondent No. 2 is purely of civil nature but it has been given cloak of criminal offence and as per the law laid down by the Hon''ble Supreme Court in Binod Kumar Vs. State of Bihar, (2014) 4 CCR 507 : (2014) 4 Crimes 305 : (2014) 4 RCR(Criminal) 881 , a civil liability cannot be converted into a criminal liability, therefore, the impugned FIR is liable to be quashed.

9. Learned counsel for the petitioners have also argued that from bare reading of the impugned FIR, no case for commission of offence punishable under sections 420 IPC is made out. It is submitted that as per the contents of the impugned FIR, amount of Rs. 5 crores was advanced to the petitioners on 03.03.2014, 04.03.2014 and 25.03.2014 as loan, however, there is no allegation that at the time when the money was advanced to the petitioners, they had any intention to cheat the respondent No. 2 or his wife. It is argued that if in the complaint, there is no allegation to the effect that the petitioners have intention to cheat the respondent No. 2 since beginning, no offence punishable under section 420 IPC is made out against the petitioners. In support of the above contentions, learned counsel for the petitioners have placed reliance on decisions of Hon''ble Supreme

Court in State of Kerala Vs. A. Pareed Pillai and Another, AIR 1973 SC 326 : (1972) CriLJ 1243 : (1972) 3 SCC 661 : (1972) SCC(Cri) 705 , Hari Prasad Chamaria Vs. Bishun Kumar Surekha and Others, AIR 1974 SC 301 : (1974) CriLJ 352 : (1973) 2 SCC 823 : (1973) SCC(Cri) 1082 and Devendra and Others Vs. State of U.P. and Another, (2009) CLT 1207 : (2009) 8 JT 120 : (2009) 7 SCALE 613 : (2009) 7 SCC 495 : (2009) 7 SCR 872 and in Vesa Holdings P. Ltd. and Others Vs. State of Kerala and Others(2015) 4 AD 275 : (2015) 2 BC 320 : (2015) 189 CompCas 580 : (2015) CriLJ 2455 : (2015) 2 Crimes 114 : (2015) 2 RCR(Criminal) 442 : (2015) 3 SCALE 782 : (2015) 4 SCJ 23 and argued that in the above mentioned decisions, the Hon'ble Supreme Court has held that intention of cheating from very beginning is sine qua non for constitution of an offence of cheating and if there is no allegation to the effect that the accused of cheating has no intention to cheat a person at the very inception, then the offence of cheating cannot be said to be made out.

10. Learned counsel for the petitioners have argued that as per the allegations contained in the impugned FIR, an amount of Rs. 5 crores was advanced to the petitioners as loan in March 2014 and later on the said amount was converted into consideration in lieu of partnership in land deal, however in both the situations, it cannot be held that the petitioners have dishonestly misappropriated the amount of Rs. 5 crores. Any amount paid as loan, if not returned as per conditions of loan, agreement, cannot be termed as misappropriation of property and the person advancing loan has remedy to recover the same by filing appropriate proceedings under civil law for recovery of loan amount. It is submitted that even if it is assumed that the same loan amount was later on converted into consideration in lieu of partnership in the land deal then also it cannot be said that the petitioners have dishonestly misappropriated the money of the respondent No. 2 because they have all the authority to create partnership in the land deal as there was no prohibition in creating partnership in the conditions of the agreement executed between them and original owners. It is argued that in fact the agreement with the respondent No. 2 was executed on 10.04.2014 and not on 03.06.2014. On 10.04.2014 the stamp was purchased and agreement was executed. On that date, the petitioners had all the authority to enter into agreement. It is further contended that even on 03.06.2014 also the petitioners had authority to create partnership under the agreement, therefore no offence under sec 406 IPC is made out against the petitioners.

11. It is further argued by the learned counsel for the petitioners that from bare reading of the FIR, it is clear that no case for commission of offence punishable under sections 464, 467 and 471 IPC is made out against the petitioners as there is no allegation that the petitioners have prepared any forged document with intent to commit fraud. It is argued that the alleged agreement executed between the petitioners and the respondent No. 2 and his wife cannot be termed as a forged document as the same has been executed by the petitioners and the respondent No. 2 and his wife and there is no allegation to the effect that the

same has been executed by the petitioners by posing themselves as some other persons or claiming the authority on behalf of other persons. It is also argued on behalf of the petitioners that agreement executed between them and the original owners was very much in existence when the agreement between petitioners and respondent No. 2 and his wife was executed even if it is presumed that same was executed on 03.06.2014. It is argued that simply because the original owners have sent a notice of cancellation of agreement, it cannot be concluded that the same has been cancelled. It is submitted that the petitioners have sufficiently replied to said notice and made it clear that they have performed their part as per the terms of agreement and ready to perform the same, therefore, agreement cannot be cancelled.

12. Learned counsel for the petitioners have also argued that in fact the petitioners have already returned the whole of the money to the respondent No. 2 on 09.01.2015 by transferring the amount of Rs. 5 crores through RTGS in the bank account of the wife of respondent No. 2 and his relatives, therefore, also nothing remains in the complaint filed by the respondent No. 2 because from the perusal of the notice dated 17.07.2014, reference of which has also been made in the impugned FIR, it is clear that respondent No. 2 has filed the complaint only with intention to recover the money paid to the petitioners in lieu of land transaction.

13. On the strength of the above arguments, learned counsel for the petitioners have prayed that the impugned FIR filed against the petitioners may be quashed as the dispute between the petitioners and the respondent No. 2 in relation to financial transaction is purely a civil dispute and the respondent No. 2 has wrongly given it a cloak of criminal offence, therefore, the same is not liable to be sustained in view of the law laid down by the Hon''ble Supreme Court.

14. Per contra, learned counsel for respondent No. 2 have vehemently opposed the prayer of the petitioners and argued that from the allegations levelled in the impugned FIR, offences punishable under sections 406, 420, 464, 467, 471 and 120-B IPC are clearly made out and, therefore, the impugned FIR is not liable to be quashed. Learned counsel for respondent No. 2 have also argued that though it is true that at the time of advancement of Rs. 5 crores on 03.03.2014, 04.03.2014 and 25.03.2014, the petitioners had no intention to cheat the respondent No. 2 and his wife, however, the said amount of Rs. 5 crores was again delivered on 03.06.2014 when the agreement between the petitioners and the respondent No. 2 in respect of the land was executed and at that time the petitioners had intention to cheat the respondent No. 2 and his wife.

15. It is further argued that on 03.06.2014, when the petitioners had executed the said agreement, they had no authority to execute the said agreement because the first agreement between the petitioners and the original owners of the land was already cancelled but the petitioners have concealed the factum of cancellation of agreement between them and the original owners and this fact itself is sufficient to show that on 03.06.2014, when the amount of Rs. 5 crores

was redelivered to them as a consideration in lieu of agreement dated 03.06.2014, the petitioners had intention to cheat the respondent No. 2 and his wife. It is argued that the petitioners' intention to cheat the respondent No. 2 and his wife was developed at a later stage of formation of contract and, therefore, it cannot be said that the petitioners had no intention to cheat the respondent No. 2 and his wife since inception.

16. It is argued that the Hon"ble Supreme Court has also held in catena of decisions that even if the allegation of the complainant discloses the civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue because several disputes of civil nature may also contain the ingredients of criminal offence and, therefore, guilty person will have to be tried as criminal offence even if they also amount to civil disputes. Learned counsel for the respondent No. 2 have placed reliance on decisions of Hon"ble Supreme Court in Vijayander Kumar and Others Vs. State of Rajasthan and Another, (2014) AIRSCW 1197 : (2014) 2 SCALE 217 : (2014) 3 SCC 389 , Arun Bhandari Vs. State of U.P. and Others, (2013) 1 AD 560 : (2013) CriLJ 1020 : (2013) 1 Crimes 113 : (2013) 1 JT 467 : (2013) 2 RCR(Criminal) 261 : (2013) 1 SCALE 229 : (2013) 2 SCC 801 : (2013) AIRSCW 569 : (2013) 1 Supreme 131 , Mahesh Choudhary Vs. State of Rajasthan and Another, (2009) 3 JT 314 : (2009) 4 SCALE 66 : (2009) 4 SCC 439 : (2009) 3 SCR 1005 and Central Bureau of Investigation Vs. A. Ravishankar Prasad and Others, (2009) CriLJ 3437 : (2009) 6 JT 589 : (2009) 7 SCALE 747 : (2009) 6 SCC 351 : (2009) 9 SCR 1025 : (2009) 5 UJ 2213 .

17. It is further argued that from the allegations contained in complaint filed by respondent No. 2, the offence punishable under section 406 IPC is clearly made out because the petitioners have executed the agreement with respondent No. 2 and his wife without having any authority to sell the land and as such dishonestly misappropriated the amount of Rs. 5 crores. It is also submitted that the petitioners had no authority to sell the subject land but they executed the agreement to sell the said land and such action of the petitioners attracts provision of section 464 IPC and they are guilty of preparing forged document, which is punishable under section 467 IPC.

18. Learned counsel for the respondent No. 2 have further submitted that even if the petitioners have returned the whole amount advanced to them, the same will not absolve the petitioners from liability of commission of offences punishable under sections 406, 420, 464, 467, 471 and 120-B IPC. In support of the above contentions, the learned counsel for the respondent No. 2 have placed reliance on decisions of the Hon"ble Supreme Court in Vishwa Nath Vs. State of Jammu and Kashmir, AIR 1983 SC 174 : (1983) 1 Crimes 635 : (1983) 1 SCALE 3 : (1983) 1 SCC 215 and Khandu Sonu Dhobi and Another Vs. State of Maharashtra, AIR 1972 SC 958 : (1972) CriLJ 593 : (1972) 3 SCC 786 : (1972) SCC(Cri) 854 : (1972) 3 SCR 510 .

19. On the strength of above arguments, learned counsel for respondent No. 2

have prayed that this criminal misc. petition may kindly be dismissed.

20. Learned Public Prosecutor has opposed this criminal misc. petition and submitted that there is no force in it and, therefore, the same is liable to be dismissed.

21. Heard learned counsels for the parties and perused the impugned FIR and the material made available by learned counsels for the parties.

22. The law in respect of quashing of FIRs by the High Court while exercising powers under section 482 CrPC is well settled by the Hon"ble Supreme Court in various decisions. To mention a few - Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, AIR 1988 SC 709 : (1988) CriLJ 853 : (1988) 1 Crimes 780 : (1988) 1 JT 279 : (1988) 1 SCALE 261 : (1988) 1 SCC 692 : (1988) 2 SCR 930 ; State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp ; Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, AIR 1996 SC 309 : (1996) CriLJ 381 : (1995) 4 Crimes 171 : (1995) 7 JT 299 : (1995) 5 SCALE 670 : (1995) 6 SCC 194 : (1995) 4 SCR 237 Supp ; Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, (1996) 5 AD 341 : AIR 1996 SC 2452 : (1996) 87 CompCas 849 : (1996) CriLJ 3501 : (1996) 3 Crimes 60 : (1996) 6 JT 227 : (1996) 5 SCALE 99 : (1996) 5 SCC 591 : (1996) 3 SCR 360 Supp ; State of Bihar Vs. Rajendra Agrawalla, (1996) CriLJ 1372 : (1996) 1 Crimes 21 : (1996) 1 JT 601 : (1996) 1 SCALE 394 : (1996) 8 SCC 164 : (1996) 1 SCR 744 , Rajesh Bajaj Vs. State NCT of Delhi and Others, AIR 1999 SC 1216 : (1999) CriLJ 1833 : (1999) 1 Crimes 136 : (1999) 2 CTC 243 : (1999) 2 JT 112 : (1999) 1 SCALE 697 : (1999) 3 SCC 259 : (1999) 1 SCR 1012 : (1999) 1 UJ 685 : (1999) AIRSCW 881 : (1999) 2 Supreme 442 ; M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others, (2000) CriLJ 1487 : (2000) 2 JT 426 : (2000) 2 SCALE 88 : (2000) 3 SCC 269 : (2000) 1 SCR 1169 : (2000) AIRSCW 682 : (2000) 2 Supreme 261 Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another, AIR 2000 SC 2341 : (2000) CriLJ 2983 : (2000) 3 JT 604 : (2000) 2 SCALE 694 : (2000) 4 SCC 168 : (2000) 2 SCR 859 : (2000) AIRSCW 2077 : (2000) 3 Supreme 13 , M. Krishnan Vs. Vijay Singh and Another, (2001) 8 AD 494 : AIR 2001 SC 3014 : (2001) CriLJ 4705 : (2001) 8 JT 540 : (2001) 7 SCALE 126 : (2001) 8 SCC 645 : (2001) AIRSCW 4142 : (2001) 7 Supreme 397 and Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, AIR 2005 SC 9 : (2005) CriLJ 92 : (2004) 9 SCALE 177 : (2005) 1 SCC 122 . The principles relevant are as under:

"(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

23. Now in the light of the principle of law laid down by the Hon^{ble} Supreme Court, if we examine the facts of the present case, it appears that the petitioners entered into an agreement on 10.02.2014 for purchasing a piece of land situated at village Pal, Jodhpur with original owners Lata Parekh, Ramesh Parekh and Pukhraj Sargara. The copies of agreement dated 10.02.2014 are placed on record by both the parties. In the said agreement, the original owners agreed to sell 31 bighas and 4 biswas of the land situated at village Pal, Jodhpur to the petitioners for total sale consideration of Rs. 52,36,00,000/- (Rupees fifty two crores and thirty six lacs). In the said agreement, the petitioners agreed to make payment of sale consideration as per the schedule mentioned in para 5. It is agreed that Rs. 5,50,00,000/- would be paid in three instalments up to 24.02.2014 and thereafter, remaining payments were to be made on the issuance of demand note by the Jodhpur Development Authority for the purpose of issuance of patta and thereafter on issuance of pattas and on registration. In condition No. 7 of the agreement dated 10.02.2014, it is mentioned that if

second party wishes to transfer certain land before the full and final payment is made as per clause 5, then the conveyance could only be effected block wise and not scatted and minimum continuous plots of area measuring not less than 4000 square yards at a time. At the same time, in clause 10 of the agreement, it is mentioned that the second party shall not attempt or create any right whatsoever till conveyance deed is registered and executed by the first party. Certain other conditions have also been mentioned in the agreement but they may not be relevant for the purpose of adjudication of this case.

24. After execution of the said agreement, the respondent No. 2 had made payment of Rs. 5 crores to the petitioners and one of the original owners Pukhraj Sargara on 03.03.2014, 04.03.2014 and 25.03.2014. Thereafter, an agreement was executed between the petitioners and the respondent No. 2 and his wife by which the respondent No. 2 and his wife were entered as partners with share of 19% in the said land transaction. In the said agreement, the payments made by the respondent No. 2 to the petitioners and one of the original owner Pukhraj Sargara on 03.03.2014, 04.03.2014 and 25.03.2014 were mentioned as part share capital invested by the respondent No. 2 and his wife in lieu of 19% partnership in the land deal. It is agreed between the parties that the remaining amount of 19% of share capital would be paid by respondent No. 2 and his wife when the last two instalments of the petitioners would be due in lieu of the agreement dated 10.02.2014 executed between the petitioners and the original owners. It is also mentioned in the agreement that only the petitioners would be responsible for any loss in the land deal and in the event of cancellation of the land deal, the respondent No. 2 and his wife would be entitled to get refund of money invested by them or to receive land in proportionate.

25. There is dispute regarding the date of execution of the agreement between the petitioners and the respondent No. 2 and his wife. As per the petitioners, the said agreement was executed on 10.04.2014, whereas as per the respondent No. 2. the agreement was executed on 03.06.2014. Respondent No. 2 is alleging that on 03.06.2014, the day when the agreement between him, his wife and the petitioners was executed, the petitioners had no authority to execute the same because earlier agreement between them and the original owners dated 10.02.2014 was already cancelled.

26. It is relevant to note here that after registration of the impugned FIR, the petitioners returned the amount of Rs. 5 crores to the concerned persons on 09.01.2015 through RTGS in their bank accounts. The counsel for respondent No. 2 have also admitted that the amount of Rs. 5 crores was returned by the petitioners in January 2015. However, the return of money by the petitioners will not in itself absolve them from liability of commission of offences as held by the Hon"ble Supreme Court in Vishwa Nath v. State of Jammu & Kashmir and Khandu Sonu Dhobi & Anr. v. State of Maharashtra (supra).

27. Now the question before the Court is that from the allegations levelled in the impugned FIR, it can be concluded that offences punishable under sections 420,

406, 464, 467, 471 and 120-B IPC are constituted or not.

28. For constituting an offence under section 420 IPC, the allegation must be to the effect that at the time of delivery of the property, the accused-person had intention to cheat the person, who has delivered the property.

29. As per the argument of the learned counsel for the respondent No. 2, when the amount of Rs. 5 crores was given to the petitioners and one original owner in March 2014, the petitioners had no intention to cheat the respondent No. 2 and his wife but later on, at the time of execution of agreement between the petitioners and the respondent No. 2 and his wife, the intention to cheat was developed and, therefore, the offence under section 420 IPC is clearly made out against the petitioners.

30. The Hon"ble Supreme Court in Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another, AIR 2000 SC 2341 : (2000) CriLJ 2983 : (2000) 3 JT 604 : (2000) 2 SCALE 694 : (2000) 4 SCC 168 : (2000) 2 SCR 859 : (2000) AIRSCW 2077 : (2000) 3 Supreme 13 has held as under:

"13. Cheating is defined in Section 415 of the Code as:

"415. 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."

The section requires -

(1) deception of any person;

(2)(a) fraudulently or dishonestly inducing that person

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person 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.

14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. in the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit

to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

31. The contention of the learned counsel for the respondent No. 2 to the effect that though the petitioner might not have intention to cheat the respondent No. 2 and his wife at the beginning but such intention was developed at a later stage when they executed the agreement by which partnership of the respondent No. 2 and his wife was created, is not acceptable.

32. The intention of an accused is relevant only at the time of entrustment of the property and to hold a person guilty of cheating. It is necessary to show that he had fraudulent or dishonest intention at the time of making the promise or at the time of entrustment of property. Therefore, I have no hesitation in holding that no offence under section 420 IPC is made out against the petitioners.

33. In the complaint, the respondent No. 2 has alleged that upon inquiring from Ruchir Parekh, it is revealed that as per conditions of agreement executed between the petitioners and original owners of the land, the petitioners were not authorised to sell the land further to anybody else and the said agreement was already cancelled in May 2014 itself and then only he came to know that the petitioners have dishonestly misappropriated sum of Rs. 5 crores. The said allegation of respondent No. 2 is in respect of offence punishable under section 406 IPC.

34. Section 405 IPC deals with the criminal breach of trust and it involves the following ingredients:

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

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

(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."

35. Section 406 IPC prescribes punishment for criminal breach of trust as defined in section 405 IPC.

36. After going through the complaint, it is clear that there is no allegation that the petitioners have misappropriated the amount of Rs. 5 crores in violation of any direction of law or in violation of contract executed between the petitioners and respondent No. 2 and his wife. There is no allegation about the dishonest intention of the petitioners in retaining the money in order to have wrongful gain to themselves except bald allegation that the petitioners did not make payment to the respondent No. 2. There is no iota of allegation about dishonest intention of the petitioners in misappropriating the property. It is not sufficient to merely allege that money has been retained by the accused-persons. It must also be alleged that the petitioners dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the petitioners did not pay the money to the respondent No. 2 does not amount to criminal breach of trust. Hence, the basic essential ingredients of dishonest misappropriation are missing in the complaint and, therefore, no case for commission of offence punishable under section 406 IPC is made out against the petitioners.

37. So far as offences punishable under sections 467 and 471 IPC are concerned, it is noticed that the petitioners have not executed the agreement with the respondent No. 2 and his wife by which their partnership was created, by claiming that they are someone else or that they are authorised by someone else to execute the said contract. Execution of such document, purporting to convey some property of which they are not the owners is not execution of a false document as defined under section 464 the Code. The Hon"ble Supreme Court in *Md. Ibrahim and Others Vs. State of Bihar and Another*, (2010) CriLJ 2223 : (2009) 11 JT 533 : (2009) 12 SCALE 250 : (2009) 8 SCC 751 : (2009) 9 UJ 4349 , while analyzing section 464 IPC has held as under:

"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 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 the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with the 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 bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

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

38. The law laid down by the Hon'ble Supreme Court in *Md. Ibrahim & Ors. v. State of Bihar & Anr.* (supra) squarely applies in the present case. The allegations against the petitioners are to the effect that they have no authority to execute any conveyance in relation to the land purchased by them through agreement to sell from the original owners. The petitioners have not claimed themselves as original owners and also not claimed that they are authorized by the original owners to execute the document by which partnership of the petitioner No. 2 and

his wife was created and as such it cannot be concluded that the petitioners have prepared any forged document. When there is no forgery, then sections 467 and 471 IPC are not attracted.

39. In the complaint, the respondent No. 2 has claimed that he had advanced loan to the tune of Rs. 5 crores to the petitioners in March 2014 on different dates. Along with the complaint, he has submitted copies of agreement executed by the petitioners allegedly on 03.06.2014 and notice sent by him on 01.07.2014. Interestingly in both the documents, there is no mention about any land transaction. In the agreement dated 03.06.2014, it has not been mentioned that the amount of loan is adjusted as share capital in lieu of creation of partnership. Similarly, in the notice dated 01.07.2014, there is no mention about any loan transaction and only there is a demand that the petitioners should get executed deed in favour of respondent No. 2 and his wife from the original owners in respect of 19% share of them in the land. It is again interesting to note that in the agreement dated 03.06.2014, there is no such condition that the petitioners would execute any deed in favour of respondent No. 2 and his wife from the original owners. As per the terms of agreement dated 03.06.2014 both the parties have agreed to sell the whole land jointly after making final payments to original owners. All the above facts lead to the conclusion that the allegations levelled in the complaint are not in conformity with contents of documents on which the respondent No. 2 is placing reliance in support of his complaint. Another fact, which creates doubt in the mind of the court, is that how the wife of the respondent No. 2 advanced Rs. 2 crores on 25.03.2014 to one of the original owner Pukhraj Sargara if the respondent No. 2 and his wife are not involved in the land deal. It is not believable that merely on asking of the petitioners, the wife of the complainant has advanced a huge amount of Rs. 2 crores to a stranger as loan. Otherwise also, no documentary evidence has been produced by the respondent No. 2 to substantiate his claim that Rs. 5 crores were advanced as loan to the petitioners in March 2014. On a specific query put by the Court, counsel for respondent No. 2 have admitted that the respondent No. 2 is not holding money lending licence. During the course of arguments, the counsel for respondent No. 2 have claimed that money paid for as loan has been accounted for in account books and income tax returns. To substantiate the said claim, copies of income tax returns pertaining to the assessment year 2014-2015 of respondent No. 2, Smt. Chandni Jain (wife of respondent No. 2) and Madan Lal Balad (father of respondent No. 2) are produced and it is argued that factum of advancement of loan is proved from the said documents. From perusal of income tax returns of the respondent No. 2, it is clear that he has not advanced any loan to the petitioners as alleged by him in the complaint. In the complaint filed by the respondent No. 2, there is no mention that the loan was advanced by the wife and father of the respondent No. 2 and it is specifically alleged that it is the respondent No. 2, who had advanced the loan to the petitioners. Hence, the allegations levelled in the impugned FIR are false on the face of it.

40. Moreover, from the notice dated 17.07.2014 sent by the respondent No. 2

and his wife to the petitioners, copy of which is enclosed with the complaint, it is clear that they have demanded their money back with compensation with a warning that if the same is not done, criminal and civil proceedings would be initiated. However, no civil proceedings had been initiated against the petitioners by the respondent No. 2 but this complaint has been filed possibly to entangle the petitioners in criminal prosecution so that they may come for some settlement. In these circumstances, I have no hesitation in holding that the respondent No. 2 has given a recovery of money dispute, which is essentially a civil dispute, a criminal cloak. Such practice is deprecated and discouraged by the Hon'ble Supreme Court in *Indian Oil Corporation Vs. NEPC India Ltd. and Others*, AIR 2006 SC 2780 : (2006) 4 CTC 60 : (2006) 6 JT 474 : (2006) 7 SCALE 286 : (2006) 6 SCC 736 : (2006) 3 SCR 704 Supp : (2006) AIRSCW 3830 : (2006) 6 Supreme 66 :

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri and Another Vs. State of U.P. and Others*, AIR 2000 SC 754 : (2000) 100 CompCas 613 : (2000) CriLJ 824 : (2000) 2 CTC 107 : (2000) 1 JT 360 : (2000) 1 SCALE 271 : (2000) 2 SCC 636 : (2000) 1 SCR 417 : (2000) AIRSCW 296 : (2000) 1 Supreme 322 , this Court observed:

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

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Cr.P.C. more frequently, where they discern malice or

frivolousness or ulterior motives on the part of the complainant. Be that as it may."

41. It is true that a given set of facts may make out a civil wrong and also a criminal offence and only because a civil remedy is available to the complainant itself cannot be a ground to quash the criminal proceedings. However, answer to the question whether the petitioners had any authority to create partnership of the respondent No. 2 and his wife in the land transaction depend upon interpretation of the clauses of the agreement to sell executed between the petitioners and the original owners. The petitioners are claiming that as per clause 7 of the agreement dated 10.02.2014, they have every right to transfer certain land to any person. However, on the other hand, the respondent No. 2 is claiming that as per clause 10 of the agreement dated 10.02.2014, the petitioners have no right to create any third party right in the subject land. The interpretation of the clauses of the agreement cannot be done while investigating a criminal complaint and it can only be adjudicated by a civil court.

42. Similarly whether the agreement executed between the petitioners and the original owners was already cancelled on the day when the petitioners had executed the agreement with the respondent No. 2 and his wife requires adjudication by a civil court because in the agreement dated 10.02.2014, the condition of making payments depends upon certain eventualities such as issuance of demand notes by the J.D.A. and issuance of patta by the J.D.A. etc. The issue that the petitioners have not made the payments of the instalments as per the terms and conditions of the agreement dated 10.02.2014 can only effectively be decided by a civil court after pondering over the evidence produced by the parties, if such dispute is raised before it.

43. The another aspect of the matter that the Magistrate before forwarding the complaint to the concerned police station under section 156(3) CrPC for investigation should have verified the truth and veracity of allegations by looking into the documents filed by the respondent No. 2 in support of complaint. The Magistrate without considering or looking into the contents of documents filed by respondent No. 2 along with the complaint has straightaway forwarded the complaint to the police by scribing the name of Police Station on a printed order-sheet. May be the Magistrate has followed the practice going on since long and has forwarded the complaint to the police without verifying the truth and the allegations levelled. However, the Hon''ble Supreme Court in Priyanka Srivastava and Others Vs. State of U.P. and Others(2015) 4 AD 242 : AIR 2015 SC 1758 : (2015) CriLJ 2396 : (2015) 2 Crimes 209 : (2015) 2 Crimes 179 : (2015) 2 JCC 974 : (2015) 2 RCR(Criminal) 1034 : (2015) 4 SCALE 120 : (2015) 130 SCL 472 has expressed concern about such practice and given a direction that the applications under section 156(3) CrPC should be accompanied by affidavit of complainant and also expressed concern about exercising powers by the Judicial Magistrate under section 156(3) without application of judicial mind, while observing as under:

"29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

44. In view of the above discussions, the FIR No. 222/2014 dated 22.09.2014 of Police Station, Shashtri Nagar, Jodhpur is hereby quashed and the criminal misc. petition is allowed.

45. The sad part of the case is that on two or three occasions when the case was listed before me, after brief arguments, the parties were granted time to resolve their dispute out of the court but every time, they failed to reach any solution.

The petitioners and the respondent No. 2 seem to be rich and wealthy persons having business in real estate. The dispute between them could have possibly resolved when the petitioners have returned the amount of Rs. 5 crores to the complainant. The counsels for respondent No. 2 have admitted that Rs. 5 crores were returned but adequate compensation has not been offered by the petitioners, therefore, he is pressing his complaint. On the other hand, counsel for the petitioners have submitted that they have offered suitable compensation but respondent No. 2 is demanding huge amount as compensation.

46. Be that as it may, the fact remains that a dispute which could not have reached up to this Court or could have decided amicably even after reaching this Court, has to be decided after hearing lengthy arguments from both the sides and after investing so much time in deciding the matter. The Courts are not shying in hearing lengthy arguments or deciding the matter come what time it may consume but when rich and wealthy persons, to satisfy their egos or for settling their personal scores or out of their greed, chose the platform of the court it is the duty of the court to curb them and to discourage them to do so. When the Courts are flooded with cases and poor, peasantry class, labour class, socially and economically backwards, differently abled, service personnels, low paid employees and genuine litigants etc. are waiting for justice from the courts, few rich and wealthy persons cannot be allowed to take the Courts to ransom by using their money and power at the cost of genuine litigants.

47. In the present matter, the respondent No. 2 has given a civil dispute a cloak of criminal offence. The petitioners are equally responsible in creating such a situation because had the petitioners returned the money in time, which they ultimately returned in January 2015, there would not have any opportunity for respondent No. 2 to file the criminal complaint against them which leads to file this criminal misc. petition. Even before this Court, both the parties have displayed their indifferent attitude towards the anxiety of court to settle their financial transaction out of court amicably, possibly because they have money power and can bear the cost of litigation. The adamant and brazen attitudes of both the parties have consumed precious time of Court, therefore, to curb this tendency and discourage such practice, strong message is required to be given, so that people like petitioners and respondent No. 2 may think twice before approaching the court of law to settle their personal scores or to satisfy their ego by using money power. Hence, the petitioners jointly and respondent No. 2 are directed to deposit Rs. 1,00,000/- each in the Rajasthan State Legal Services Authority, Jodhpur within a period of one month from today. Proof of deposit of the said amount will be furnished by the respective parties to the Deputy Registrar (Judicial) of this Court at Jodhpur, who shall place the same on record. In case the parties fail to deposit the amount as directed, the matter be brought into the notice of Court.