

(2014) 09 GUJ CK 0118
In the Gujarat High Court

Case No : Special Criminal Application (Quashing) No. 1525 of 2014, Special Criminal Appl. Nos. 2514, 3095 of 2014 and Cri. Misc. Appl. No. 8311 of 2014

Ritaben Nareshbhai Desai and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 29-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 7 Rule 11, Order 7 Rule 11(a), 35A

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 160, 173(2), 439, 482

Penal Code, 1860 (IPC) — Section 114, 120(B), 120B, 34, 405

Citation : (2015) CriLJ 443

Hon'ble Judges : G.B. Shah, J

Bench : Single Bench

Advocate : P.P. Majmudar, P.T. Jasani, K.S. Shah and A.M. Dagli, Advocates for the Appellant; B.B. Naik, Sr. Adv. assisted by Parthiv A. Bhatt, Viral K. Shah and K.L. Pandya, A.P.P, Advocates for the Respondent

Judgement

G.B. Shah, J.—Rule. Learned APP, Mr. K.L. Pandya for the respondent No. 1-State of Gujarat and learned Senior Advocate, Mr. B.B. Naik assisted by learned advocates, Mr. Parthiv Bhatt and Mr. Viral K. Shah for the respondent No. 2-original-complainant-Rameshbhai Navadia waive service of notice of rule in all these matters. These applications are filed to quash and set aside the complaint filed by the respondent No. 2-original complainant (hereinafter referred to as "the original complainant" for short) against the petitioners being C.R. No. 1-99 of 2014 registered with Umra Police Station, Surat, and all consequential proceedings thereunder.

2. Short facts are that land of survey No. 596 admeasuring 1,00,000 sq. yards of the joint ownership of Ganda Govan and Jatha Jairam was divided equally in 1969. In 1989, Gandabhai executed a Power of Attorney, satakhath and possession receipt in favour of Shri Hans Kamal Grover qua his share of 50,000

sq. yards. Shri Hans Kamal Grover executed satakhath in favour of Anil Taneja qua 50,000 sq.yards on 16-5-1989.

2.1 Anil Taneja filed Civil Suit No. 702 of 1991 against Shri Hans Kamal Grover and Gandabhai. On 2-7-1999, Shri Hans Kamal Grover executed satakhath on the strength of Power of Attorney of Gandabhai in favour of Smt. Ritaben Nareshbhai Desai i.e. petitioner No. 1 handing over possession of 15,500 sq. yards. During 2-7-1999 to 26-10-1999, petitioners paid Rs. 2,47,95,500/- to Shri Hans Kamal Grover.

2.2 A compromise was arrived at in Civil Suit No. 702 of 1991 and decree was passed on 25-10-1999 on the strength of said compromise and permanent injunction was granted. In pursuance of the same, Gandabhai and his family received total consideration from Shri Hans Kamal Grover and handed over all rights stating on affidavit that compromise is acceptable to them. Anil Taneja vested all rights in respect of said land to Shri Hans Kamal Grover.

2.3 However, thereafter, Anil Taneja filed Recall Application No. 40 of 2012 on 5-4-2012 to recall order dated 25-10-1999 passed in Civil Suit No. 702 of 1991. However, said application was rejected on 19-9-2013. Against the said order, Special Civil Application No. 14810 of 2013 was filed which was disposed of vide judgment dated 12-8-2014.

2.4 Petitioner No. 1 filed application for obtaining NOC from Airport Authority on 3-12-1999. Petitioner No. 1 also deposited Rs. 1,23,000/- with GEB for electric connection in 1999. On 19-2-2000, District Development Officer declared the said land as non-agricultural land. Petitioner No. 1 - original accused No. 2 vide Chalan No. 20 dated 29-1-2000 paid premium amount of Rs. 2,63,370/- by cheque from Dimple Films Pvt. Ltd. Entry No. 2342 is made in Village Form No. 6 on 31-3-2000 qua NA permission for multiplex cinema and DILR measured the land.

2.5 Consequent upon the death of Shri Hans Kamal Grover on 8-8-2000, though amount was fully paid, sale deed could not be executed by Shri Hans Kamal.

2.6 The petitioners filed Special Civil Suit No. 273 of 2002 for specific performance of agreement dated 2-7-1999. Gandabhai died on 4-3-2005. The petitioners applied for entry in revenue record on 1-9-2007 and Entry No. 4988 was mutated on 2-11-2007 in favour of petitioners. Said entry is not challenged by anyone. Heirs of Shri Hans Kamal transferred all rights in favour of the petitioners by registered Assignment Deed having Sr. No. 13700 on 28-9-2007. Thereafter, Confirmation Deed was also executed on 19-6-2010 and same was registered on 2-7-2010. The petitioners paid stamp duty of Rs. 23.00 lakhs.

2.7 On 3-2-2006, a bogus Power of Attorney was executed of heirs of Gandabhai in favour of Babubhai Manjibhai Gabani in which the original complainant-Ramesh Navadia committed fraud and Babubhai Manjibhai Gabani executed sale deed in favour of Ramesh Navadia-original complainant qua 12959 sq.yards of

land on 21-11-2006. Pursuant to which, the original complainant-Ramesh Navadia sold the said land to Natha Jivani on 3-4-2007. Two correction deeds were executed between Babubhai Manjibhai and the original complainant as well as the original complainant and Natha Jivani on 11-4-2007. Natha Jivani executed sale deed in favour of Jitendra Vaghasia, Ramesh Vaghasia and Jayesh Govind Balar on 25-3-2008/31-3-2008. Jitendra Vaghasia and Ramesh Vaghasia executed sale deed in favour of Keyur Manu Balar qua 50% share in land in question i.e. 50% of 12959 sq. yards of land on 9-8-2009.

2.8 Petitioner No. 2-original accused No. 3 filed criminal complaint being C.R. No. I-777 of 2008 on 19-9-2008 in which bail was granted vide order dated 7-5-2012 passed in Crl. Misc. Appln. No. 5160 of 2002 to Power of Attorney, Babubhai Manjibhai Gabani, who sold the land to respondent No. 2 herein-original complainant, on making a statement that he will help the petitioners herein in getting the said sale deed cancelled.

2.9 The petitioners filed Special Civil Suit No. 398 of 2012 for cancellation of sale deeds of original complainant-Ramesh Navadia. The petitioners also filed Regular Execution application No. 12 of 2011 before learned Sr. Civil Judge, Surat, for execution of decree dated 25-10-2099 (sic) which is pending. Application filed by subsequent purchasers in said execution application was rejected on 14-6-2012 against which, Special Civil Application No. 9630 of 2012 filed before the High Court was disposed of on 25-9-2012 by observing that purchasers of said land are not bona fide ones and Entry No. 6987 to that effect was entered. Special Leave to Appeal (Civil) No. 20848 of 2013 preferred against the said order was dismissed on 2-7-2013 by the Hon"ble Supreme Court.

2.10 According to the petitioners, above sale deeds are of agricultural lands while land in question is pertaining to NA land and hence, sale deeds are bogus. Special Civil Suit No. 262 of 2011 filed by the original complainant-Ramesh Navadia was rejected on 22-6-2012. Against said order, First Appeal No. 2400 of 2012 was filed. However, said appeal was dismissed vide judgment dated 31-7-2012. It is not the case of the original complainant-Ramesh Navadia that the said order dated 31-7-2012 passed in First Appeal No. 2400 of 2012 has been challenged before the higher forum and thus, the said facts and issues involved in it have attained finality.

2.11 Criminal complaint filed by the original complainant-Ramesh Navadia against the petitioners (in all against 13 accused) on 10-5-2011 vide letter dated 14-5-2011 kramank/araj/pok/183/11 was forwarded to Assistant Police Commissioner, "E" Division, by Deputy Police Commissioner, "Zone-2" City of Surat, for preliminary inquiry and accordingly, Assistant Police Commissioner, "E" Division, has prepared his report and forwarded the said report dated 16-7-2011 (page No. 169) to Deputy Police Commissioner, "Zone-2". The said report dated 16-7-2011 was ordered to be filed after the opinion of Deputy Police Commissioner, "Zone-2" and Additional Police Commissioner, "Range-2" of City of Surat. The original complainant then filed Special Criminal Application No. 1778

of 2012 for registration of FIR against the petitioners which was disposed of on 1-10-2012. Criminal Appeal No. 55 of 2014 (arising out of SLP (Cri.) No. 591 of 2013) preferred against said order was also disposed of by the Hon''ble Supreme Court without entering into the merits of the matter on 6-1-2014 directing to register FIR relying on the case of Lalita Kumari v. State of U.P.

2.12 On 13-1-2014, SIT (Collector) declared the sale deeds of the original complainant-Ramesh Navadia and other purchasers as forged.

2.13 In pursuance of order dated 6-1-2014 passed by the Hon''ble Supreme Court, FIR was registered against the petitioners alleging inter alia that co-accused Alpesh Babubhai Vekaria created bogus satakhata and payment receipt wherein signature of Rani Grover and payment dated 28-4-2000 was created even though Rani Grover, mother of Shri Hans Kamal, died on 17-9-1999. It was further alleged that on 11-10-1999 original owner-Gandabhai executed Power of Attorney in favour of Shri Hans Kamal. Respondent No. 2 agreed to purchase the land and paid consideration to Shri Hans Kamal. It was further alleged that as Hans Kamal passed away, his legal heirs executed sale deed in his favour and amount was paid to Kaminiben, who cheated him by executing bogus documents including satakhata in favour of petitioners. It was alleged that satakhata executed in favour of petitioner No. 1 is bogus and it is on the basis of those bogus documents, the petitioners are trying to grab possession from the original complainant-Ramesh Navadia. According to the petitioners, they are decree holders of Regular Civil Suit No. 702 of 1991 in respect of survey No. 392 paiki qua 11,956 sq. yards. They are not concerned with other lands of same survey No. 392 belonging to Alpesh Vekaria. Hence, the present petitions for quashing.

3. Heard learned advocates, Mr. P.P. Majmudar, for the petitioners of Special Criminal Application No. 1525 of 2014, Mr. P.T. Jasani for the petitioners of Special Criminal Application No. 2514 of 2014, Mr. K.S. Shah for the petitioners of Special Criminal Application No. 3095 of 2014 and Mr. A.M. Dagli for the petitioners of Criminal Misc. Application No. 8311 of 2014, learned Addl. Public Prosecutor for the State and learned Senior Advocate, Mr. B.B. Naik, assisted by learned advocates, Mr. Parthiv Bhatt and Mr. Viral K. Shah for the original complainant-Rameshbhai Navadia in all the petitions.

4. It is pertinent to note at this juncture that learned advocate, Mr. Majmudar, produced affidavit of accused No. 3-Nareshbhai Kikubhai Desai dated 26-8-2014 requesting this Court to consider the averments made therein and to permit the applicants to take documents on record which is annexed vide Annexure-R/1. He further submitted that he is producing the same since some of those documents were not available with the learned advocate and they were subsequently brought to the notice of the advocate and therefore, the submissions made by him are to be considered more particularly when the rejoinder submission is yet to be commenced by him. If the cited documents are taken on record, no prejudice would be caused to the otherside.

4.1 Learned Senior Advocate, Mr. B.B. Naik, for the original complainant-Rameshbhai Navadia, submitted that as the endorsement dated 26-8-2014 is made by them on the said affidavit at the stage of submission of rejoinder i.e. after completion of his submissions, an attempt has been made to produce further documents along with the affidavit prepared by the petitioners herein and as the original complainant has completed his submissions, now no new documents should be permitted to be produced on record more particularly when the Hon'ble Apex Court has clearly held that while deciding the question related to Section 482, Cr.P.C., the averments made in the FIR are required to be considered and the Court has not to go through each and every document which is to be produced by either side. Moreover, this is to seal the loopholes which the otherside has found after completion of the submissions on behalf of the original complainant and hence, such a permission for producing new documents should not be granted otherwise there would be no end to hearing of the proceedings.

4.2 On the above point, I have considered the above referred rival submissions made by the learned advocates for the parties. It is not in dispute that at the stage of submission of rejoinder, the learned advocate for the petitioners herein submitted affidavit dated 26-8-2014 with a request to take the documents at Annexure-R/1 which are in the form of paper book on record. I have considered the averments made in the affidavit referred hereinabove of the petitioners together with the above referred submissions of the learned advocate for the parties. Production of new material and that too at the stage of rejoinder is impermissible more particularly when enough opportunities were already given to all the concerned parties prior to commencement of hearing. Under the circumstances, I do not find any reason to allow the submission made by the learned advocate for the petitioners-original accused Nos. 2, 3, 6 and 11 to permit him to take the documents annexed at Annexure-R/1 on record and allow him to read the same during the course of his submission in rejoinder. Hence, said request is hereby rejected.

5. Learned advocate, Mr. P.P. Majmudar for the petitioners-original accused Nos. 2, 3, 6 and 11, then submitted that none of the ingredients of the alleged offences are prima facie made out on a bare reading of the FIR itself. According to him, the present FIR filed by the original complainant-Ramesh Navadia on 5-11-2007 is a counter blast to the complaint filed first in point of time on 17-7-2007 by accused No. 3 herein-Nareshbhai Kikubhai Desai against the original complainant-Ramesh Navadia. Likewise, after investigation of the complaints dated 17-7-2007 and 3-8-2007, when the concerned Police Station had registered the offence against 11 accused on 17-9-2008 vide I.C.R. No. 777 of 2008, again a faint attempt by way of counter blast to the registration of offence has been made by original complainant-Ramesh Navadia by preferring second complaint against four accused on 19-9-2008.

5.1 He further submitted that there is an unexplained delay in lodging the present FIR. He further submitted that as there is no privity of contract between

the petitioners and original complainant, there can be no misrepresentation and entrustment and therefore, the ingredients of offences under Section 415 of cheating and section 405 of criminal breach of trust cannot be made out against the petitioners. He further submitted that sections 406 and 420 of IPC cannot be invoked together. He further submitted that the satakhat executed by Hans Kamal Grover on 2-7-1999 is not disputed either by himself or his legal heirs and on the contrary, assignment deed and confirmation deed was executed in favour of petitioner Nos. 1 and 2-original accused Nos. 2 and 3 based on the said satakhat which is indicative of the fact that no false or forged documents were created by the petitioners and hence, offence under Section 463 of IPC also cannot be made out against the petitioners. According to him, it is the original complainant, who committed forgery by purchasing the land from the legal heirs of Gandabhai Govanbhai on the basis of forged Power of Attorney and forged consent letters of legal heirs of wife of Hans Kamal Grover, which is prima facie believed by this Court while rejecting the quashing petition filed by respondent No. 2-original accused-Babubhai Navadia. In this regard, he relied on the ratio laid down in the case of Md. Ibrahim and Others Vs. State of Bihar and Another, .

5.2 He further submitted that there is practically no pending civil dispute between the parties and the averments made in the plaint of Special Civil Suit No. 262 of 2011 and that of the FIR/complaint are consistent with each other and the original complainant-Ramesh Navadia wants to convert the said civil dispute, which has attained finality, into criminal one to save his skin. Therefore, according to him, the impugned FIR is nothing but an abuse of process of law which deserves to be quashed. Relying on a decision of the Hon''ble Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , he submitted that when criminal proceedings are maliciously instituted with an ulterior motive for wrecking vengeance on the accused due to private and personal grudge, power under S. 482 of Cr.P.C. can be exercised. Since the present case falls within the parameters laid down by the Hon''ble Supreme Court in the said decision, it is requested that the impugned FIR be quashed. Taking this Court through page No. 181 onwards, he submitted that the Hon''ble Apex Court has not examined the matter on merits and relying on the decision rendered in Lalita Kumari ordered to register FIR and it does not mean that FIR cannot be quashed if it is found that the prima facie ingredients of the offences alleged in the FIR are not made out.

5.3 He relied on the following decisions:

- i) Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, ;
- ii) Alpico Finance Ltd. Vs. P. Sadasivan and Another, ;
- iii) Ajay Mitra Vs. State of M.P. and Others, ;
- iv) Kishan Singh (D) through LRs. Vs. Gurpal Singh and Others, ;

- v) Prakash Ramchandra Barot and Others Vs. State of Gujarat and Another, ;
- vi) Rashmi Jain Vs. State of U.P. and Another, ;
- vii) Kishan Singh (D) through LRs. Vs. Gurpal Singh and Others, ;
- viii) Thermax Ltd. and Others Vs. K.M. Johny and Others, ;
- ix) Rajiv Thapar and Others Vs. Madan Lal Kapoor, ; and
- x) Paramjeet Batra Vs. State of Uttarakhand and Others, .

6. While adopting the submissions made by learned advocate, Mr. P.P. Majmudar, learned advocate, Mr. P.J. Jasani, submitted that the original complainant-Ramesh Navadia does not have locus to file the impugned FIR as he himself is the accused of complaint filed by petitioner No. 2-Nareshbhai Kikubhai Desai-original accused No. 3 and just to press the petitioners to settle the entire matter, present FIR is filed. He further submitted that when executors of the documents are admitting the signatures on the documents executed in favour of Ritaben Desai and Nareshbhai Desai, the original complainant cannot make any allegations regarding the genuineness of those documents because the original complainant-Ramesh Navadia has no locus for the same.

6.1 Apart from adopting the submissions of Mr. P.P. Majmudar, learned advocates, Mr. A.M. Dagli and Mr. Kunal Shah, submitted that proceedings initiated by the original complainant-Ramesh Navadia against the petitioners are abuse of the process of law as a civil suit being Special Civil Suit No. 236 of 2006 was filed by one Alpeshbhai before the learned Principal Senior Civil Judge, Surat, for specific performance of an agreement to sale executed on 16-2-1989 with Gandabhai Patel and Hans Kamal Grover and ultimately, in pursuance of a compromise arrived at between the parties, a decree was drawn and he being aware of all the proceedings has suppressed the fact that Nareshbhai has already filed complaint being C.R. No. I-777 of 2008 against the complainant herein in which, charge-sheet has also been filed against him and Special Criminal Application No. 1778 of 2012 filed by him before this Court was disposed of on 1-10-2012 and if he had any grievance about the dispute of the years 1997, 1998-2000, his statements could have been taken in that regard in the said complaint filed by Nareshbhai but registration of the second complaint is nothing but to pressurize the petitioners in the parallel civil proceedings going on before the competent court including this Court. Relying on a decision of the Hon"ble Supreme Court in the case of T.T. Antony Vs. State of Kerala and Others, , he submitted that case of fresh investigation based on second or successive FIR connected to cognizable offence allegedly committed in course of same transaction in which either investigation is under way or final report under Sec. 173(2) Cr.P.C. is submitted may be a fit case to exercise powers under Section 482 of Cr.P.C.

7. Learned Senior Advocate, Mr. B.B. Naik, submitted that out of four petitions, three are filed under Article 226 of the Constitution of India by way of Special Criminal Applications while one is filed under Section 482 of the Code of Criminal

Procedure by way of Criminal Misc. Application for quashing of First Information Report. He further submitted that when a petition under Article 226 of the Constitution of India and proceedings under Sec. 482 of Cr.P.C. are initiated for quashing the FIR, the jurisdiction of the Court is required to be looked into. In this connection, he invited attention of this Court towards the decision rendered in the case of State of Orissa and Another Vs. Saroj Kumar Sahoo, . He further submitted that the law laid down by the Hon''ble Apex Court in R.P. Kapur Vs. The State of Punjab, has been reiterated by the Hon''ble Apex Court in Saroj Kumar Sahoo (supra). Taking this Court through paras 8 and 9 of the said judgment, he submitted that three categories are devised for exercise of powers as to whether there is a legal bar against initiation or continuation of the proceedings. In this case, neither of the advocates of the petitioners has argued that there is any legal bar against initiation or continuation of investigation under the disputed FIR. According to him, the first and third categories are not applicable in the present case because investigation is not completed and evidence is not gathered and that stage has not reached in the present case and it will reach as soon as investigating agency completes the investigation, files charge-sheet and records evidence before the Court. As far as the second category is concerned, a bare reading of the FIR makes out a prima facie cognizable offence in the present case and hence, the FIR cannot be quashed.

7.1 Taking this Court through the said decision in Saroj Kumar Sahoo (supra), he submitted that it has been held by the Hon''ble Supreme Court that when a cognizable offence is disclosed, FIR must be registered. The Hon''ble Supreme Court has directed therein that registration of FIR means that there is a disclosure of cognizable offence.

7.2 He further submitted that if the cases of the present petitioners are falling either in category 1 or category 3, their petitions are required to be allowed. Second category is ruled out in the present case as, in the present case, there is a prima facie case made out from a bare reading of FIR. He further submitted that the effort made by the learned advocates of the petitioners is contrary to the ratio laid down by the Hon''ble Supreme Court in the said reported case in Saroj Kumar Sahoo (supra). According to him, in view of the said judgment of the Hon''ble Supreme Court, second category is ruled out and neither of the learned advocates for the petitioners could point out that their cases fall either under category No. 1 or category No. 3 and since cases of the petitioners are not falling either in category No. 1 or in category No. 3 as referred above and considering the remaining category No. 2, when allegations made in the complaint disclose cognizable offence, then all the petitions require to be dismissed.

7.3 Mr. Naik submitted that in 2006, Rs. 36.00 lakhs have been taken away from the original complainant-Ramesh Navadia by Kaminiben, wife of deceased Hans Kamal Grover and accordingly, sale-deed was executed. Kaminiben-accused No. 4 was fully aware when document was executed that she had already received

the amount and gave consent vide document dated 23-6-2005 for execution of sale-deed in favour of the complainant-Ramesh Navadia. In spite of that, she executed the document in collusion with Naresh Desai-accused No. 3 herein. He further submitted that report of Assistant Commissioner of Police, "E" Division, dated 16-7-2011 was produced before the Hon"ble Supreme Court and the said report was accepted by the Apex Court and directed registration of FIR. The Deputy Commissioner of Police did not grant permission to register FIR on the basis of the said report of Assistant Commissioner of Police and, therefore, the complainant approached this Court but relief was not granted and hence, the complainant approached before the Supreme Court and the Hon"ble Supreme Court has accepted the plea after considering the report of said Assistant Commissioner of Police and directed for registration of FIR. In this regard, he took this Court to page 181, which is the order of the Hon"ble Supreme Court. According to Mr. Naik, the FIR does disclose cognizable offence and hence, it requires to be investigated to test whether the document of agreement to sell dated 2-7-1999 is genuine or not. The basic allegation is that this is a forged document and on that basis, everything proceeded with and that too against the complainant-Ramesh Navadia, who had purchased the land by registered sale-deed by making rest of the payment with consent of heirs of Hans Kamal Grower.

7.4 Taking this Court through running pages 283 to 289, he submitted that on 21-11-2006, i.e. the date of execution of the sale-deed, the complainant became the owner. Thereafter, since the complainant came to know that the accused came with bogus or forged agreement to sell of 1999 and got the assignment deed in 2007, he submitted the first complaint on 5-11-2007 (pages 287 to 289). Mr. Naik submitted that the material placed by the accused herein cannot be taken into consideration at the time of investigation which is yet to be carried out and can only be taken into consideration after filing of charge-sheet and at the time of trial.

7.5 He took this Court towards a decision, reported in Vijayander Kumar and Others Vs. State of Rajasthan and Another, more particularly paras 7 to 12 and submitted that if it involves a civil dispute, it self cannot be a ground to quash a criminal proceeding but in the year 2014 also, decision rendered in Ravindra Kumar Madhanlal Goenka and Another Vs. Rugmini Ram Raghav Spinners P. Ltd., is followed and it is reiterated that the real test is whether allegations in the complaint disclose a criminal offence or not.

7.6 He further submitted that when a quashing petition is filed, contents of FIR are required to be seen. If the contents of the FIR make out a prima facie cognizable offence, then power of quashing cannot be exercised. Sometimes, there may be both civil and criminal wrongs and in such a case, both the proceedings can be simultaneously proceeded with and it cannot be construed that as there is a civil remedy, criminal proceedings cannot be resorted to and both the proceedings can proceed together.

7.7 As far as the delay in lodging the FIR is concerned, he submitted that the

delay in lodging the FIR has been due to the fault on the part of police and not on the part of complainant and hence, the aspect of delay cannot be looked into. Delay has to be explained and plausible explanation has been given regarding the delay. In this case, the delay is caused due to the fault of the other side as the FIR is not allowed to be registered since 2007. Secondly, because of the influence of the accused, FIR was not allowed to be registered and hence, delay will not come in the way of the complainant. According to him, delay is to be explained during the stage of trial and not at this stage. In this connection, he relied on the decisions reported in Jagdish Ram Vs. State of Rajasthan and Another, , C.P. Subhash Vs. Inspector of Police Chennai and Others, more particularly paras 6.

7.8 Taking this Court through the FIR, he submitted that a bare reading of the FIR clearly makes out a case of cognizable offence and hence, complaint cannot be quashed. He further submitted that the accused have forged and fabricated "satakhat" has been utilised to get subsequent documents.

7.9 As regards the conspiracy, he submitted that all these accused acted in conjoint manner in pursuance of a larger conspiracy. According to him, there are clear allegations and report of ACP in pursuance of complaint clearly makes out that these accused in collusion with each other tried to deprive the present complainant of the land which he legally purchased by execution of registered sale-deed. Therefore, if these persons are allowed to go free even without investigation, they will continue their illegal activities. He submitted that conspiracy hatches in secrecy and hence, there cannot be any direct evidence. It is not necessary that in conspiracy, each one of the accused should play a role and that can be inferred on completion of trial after adducing evidence. In this connection, he took this Court through a decision reported in Ajay Agarwal Vs. Union of India and others, , more particularly paras 9 to 11.

7.10 Lastly, he submitted that since the parameters laid down by the Hon"ble Supreme Court in these reported decisions are not made out by any of the accused, custodial interrogation of the accused is absolutely necessary to bring out the real documents and hence, all these petitions require to be dismissed.

8. Before proceeding with the merits of the case on hand and dealing with the rival submissions made by the learned advocate for the parties referred hereinabove, the law laid down by the Hon"ble Apex Court in R.P. Kapur Vs. The State of Punjab, which has been reiterated in Saroj Kumar Sahoo (supra) enumerating therein three categories in paragraph Nos. 9 to 11 is required to be gone into. Those three categories read as under:

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or 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."

9. As referred hereinabove, learned Senior Advocate, Mr. B.B. Naik specifically submitted that the category Nos. 1 and 3 are not applicable as discussed hereinabove and category No. 2 can only be made applicable in the case on hand and so far as second category is concerned, a bare reading of FIR makes out a prima facie cognizable offence and hence, when allegations levelled against the present accused by way of complaint in which charge-sheet would be filed at the end of investigation, there is no reason of quashing the complaint at the threshold so far as the present petitions are concerned. In short, it is the submission of learned Senior Advocate, Mr. Naik, that when the petitioners could not point out that their case falls either under category No. 1 or category No. 3, then, so far as category No. 2 is concerned, the registration of FIR is mandatory and when the said FIR discloses cognizable offence then, no preliminary inquiry is permissible because the said stage comes only when investigation is over.

9.1 In light of the above referred submission made by learned Senior Advocate for the original complainant-Ramesh Navadia, if the above referred paragraphs 9 to 11 of the decision rendered in Saroj Kumar Sahoo (supra) are perused, it would appear that in the year 1960, the Apex Court in R.P. Kapur Vs. The State of Punjab, has mainly laid down three categories of cases where inherent power can and should be exercised to quash the proceedings, which have been shown in paragraph No. 9 as referred hereinabove. Thereafter, while deciding the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, in the year 1992, i.e. approximately after 32 years, the Apex Court has enhanced the illustrative categories to seven in number in its paragraph No. 102, which have been reproduced in paragraph No. 10 of the decision in Saroj Kumar Sahoo (supra). During the above referred period of 32 years, the pattern of various crimes have changed gradually and systematically in such a manner that the Hon'ble Apex Court was forced to review and then enhanced the scope and jurisdiction of the Court concerned while exercising power under Section 482 of Cr.P.C. and accordingly, category Nos. 4, 6 and 7 as shown in paragraph No. 102 of Bhajan Lal (supra) appear to have been impleaded because in number of cases, the Hon'ble Apex Court has observed that no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. We all have experienced that since last 15 years and more particularly after the year 2005, the white collar crime related to land grabbing has increased manifold and while dealing with such crime, day in and day out, persons, who are concerned with legal field, have also further experienced that while committing such white collar-crime, all the boundaries of moral principles of values and natural laws have been sidetracked by them in such a way that at times it is difficult to meet with the situation fixing ourselves in certain fixed categories but while undergoing to deal with such a situation and with a view to curb and to keep pace with such crime, one has not to swim in shallow water but the inner-dip dive of conscience is required which would

observe the picture and, in turn, definitely give correct solution and answer.

10. I have also gone through the latest judgment rendered by the Hon"ble Apex Court in the case of Vijayander Kumar and Others Vs. State of Rajasthan and Another, . Paragraph 8 of the same reads as under on which the learned Senior Advocate for original complainant-Ramesh Navadia has placed more reliance:

"8. On behalf of the appellants, reliance has been placed upon judgments of this Court in the case of Thermax Ltd. and Others Vs. K.M. Johny and Others, and in case of Dalip Kaur and Others Vs. Jagnar Singh and Another, . There can be no dispute with the legal proposition laid down in the case of Anil Mahajan v. Bhor Industries Limited which has been discussed in paragraph 31 in the case of Thermax Limited (supra) that if the complaint discloses only a simple case of civil dispute between the parties and there is an absolute absence of requisite averment to make out a case of cheating, the criminal proceeding can be quashed. Similar is the law noticed in the case of Dalip Kaur (supra). In this case, the matter was remanded back to the High Court because of non-consideration of relevant issues as noticed in paragraph 10, but the law was further clarified in paragraph 11 by placing reliance upon judgment of this Court in R. Kalyani Vs. Janak C. Mehta and Others, . It is relevant to extract paragraph 11 of the judgment which runs as follows:--

"11. There cannot furthermore be any doubt that the High Court would exercise its inherent jurisdiction only when one or the other propositions of law, as laid down in R. Kalyani v. Janak C. Mehta is attracted, which are as under:--

"(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be ground to hold that the criminal proceedings should not be allowed to continue.""

10.1 Drawing attention on the above referred four propositions of law, more particularly Clause Nos. 2, 3 and 4, the learned Senior Advocate for the original complainant reiterated his submissions as referred above and I have considered the same. It is pertinent to note that so far as the case on hand is concerned, the civil dispute was, as such, not only disclosed but practically appeared to be over, which will be discussed a little later. It is to be noted that most of the annexures to petitions under Section 482 of Cr.P.C. or under Article 226 of the

Constitution of India, have already been tested by the various Courts including this High Court as well as the Hon''ble Apex Court. Thus, in short, this Court is alive with the mandate of the Hon''ble Apex Court that while exercising jurisdiction under Section 482 of Cr.P.C., it is not permissible to act as if it is a trial court but I am of the view that the annexures/documents, which are already tested by various Courts, are required to be considered in its entirety so that clear conduct of all concerned can be properly portrayed and in turn be appreciated.

11. Drawing attention towards pages 287 to 289, which is the copy of the complaint dated 5-11-2007 filed by the original complainant-Ramesh Navadia against Ritaben Nareshbhai Desai and Nareshbhai Kikubhai Desai accused Nos. 2 and 3 respectively of the complaint under challenge, Mr. Naik submitted that as such, it is not correct on the part of the petitioners to say that they have filed the complaint at the initial point of time, i.e. on 17-7-2007 and to have a counter attack, the original complainant has subsequently initiated criminal action with the sole intention to save his skin. The said complaint alleged to have been filed by the original accused herein on 17-7-2007 has not come on record nor has any explanation for non-production of the same is forthcoming on record and under the circumstances, said fact is not believable is the submission made by learned Senior Advocate for the original complainant-Ramesh Navadia. In fact, the said accused Nos. 2 and 3 herein have taken criminal action on 17-9-2008 when I.C.R. No. 777 of 2008 was registered before the concerned Police Station approximately after 10 months from the complaint which had been filed by the original complainant-Ramesh Navadia. In respect of the complaint dated 5-11-2007 referred hereinabove, no action was taken by the concerned police official because as such, they were under influence of original accused Nos. 2 and 3 herein and hence on 19-9-2008, the original complainant has filed another complaint (pages 299) against original accused Nos. 2, 3, 4 and 6 herein addressing to the Police Commissioner, Surat City, by marking a copy thereof to DCB Police Station, Shri Parmar. In spite of filing of the above two complaints, the police has not taken any action and hence, again on 10-5-2011 (page 160), third complaint was filed against all 13 accused persons herein before the Police Commissioner, Surat City, by marking a copy to six officials mentioned therein and as the police remained silent, original complainant herein has preferred Special Criminal Application No. 1778 of 2012 (page 176) and this Court vide order dated 1-10-2012 has disposed of the said petition observing that the original complainant herein can make appropriate application and can have recourse as provided under the Criminal Procedure Code even for redressing his grievance regarding the complaint by filing private complaint approaching the Court of learned Magistrate. Said order was challenged before the Hon''ble Apex Court by preferring Criminal Appeal No. 55 of 2014. Referring to the order dated 6-1-2014 passed by the Hon''ble Apex Court in the said Criminal Appeal No. 55 of 2014, copy of which is at pages 181-186, the learned Senior Advocate, Mr. Naik, vehemently submitted that the Hon''ble Supreme Court has directed

therein that registration of FIR is mandatory after observing the report of Assistant Commissioner of Police, who had conducted preliminary inquiry and found that there is a disclosure of cognizable offence. Thus, second category laid down in case of R.P. Kapur Vs. The State of Punjab, is ruled out in the present case as, in the present case, there is a prima facie case made out from a bare reading of FIR. The above submission appears attractive and vibrant but the same became hollow and distorted and it would be characterized from the conduct of the original complainant.

11.1 Before dealing with the above-referred submissions made by the learned advocates for the parties, the annexures/documents at page Nos. 242 to 345, on which the original complainant-Ramesh Navadia placed reliance and also produced along with his affidavit-in-reply dated 08-07-2014, are required to be looked into. The description of the said documents in a tabular form are as under:--

11.2 Details of land in question, which had changed many hands in quick succession, i.e. at short intervals [21/11/2006 to 9/8/2009] are as under:--

11.2(a) The observations made by this Court in para 19 of the order dated 25-10-2013 passed in Special Criminal Application No. 1008 of 2012, Criminal Misc. Application No. 4189 of 2012 and Criminal Misc. Application No. 4191 of 2012 (reproduced in para 13.1 of this judgment) appear very significant because so far as above referred seller and purchaser are concerned, one can get an idea regarding the near and dear relations of all concerned in business of land and they also being near and dear relatives of each other, as narrated therein.

11.3 As referred hereinabove, during the course of submissions, learned Senior Advocate for the original complainant-Rameshbhai Navadia put much stress on the point that the original complainant-Rameshbhai Navadia has initiated criminal action first in point of time in comparison to accused Nos. 2 and 3 herein. The original complainant-Rameshbhai Navadia had filed the complaint first on 5-11-2007 and the next on 19-9-2008. Though it is the fact that no document had come on record on behalf of original accused Nos. 2 and 3 to show that they have moved criminal machinery by filing complaint on 17-7-2007 first in point of time as submitted by learned advocate, Mr. P.P. Majmudar for accused Nos. 2 and 3 herein, but if the complaint dated 5-11-2007 filed by the original complainant-Ramesh Navadia, copy of which is produced with annexures from pages 287 to 291, is perused, it would appear that the original complainant-Rameshbhai Navadia himself has admitted therein that prior to 5-11-2007, Nareshbhai Kikubhai Desai and Ritaben Nareshbhai Desai, accused Nos. 2 and 3 herein, have made applications before Umra Police Station and tried to misguide the said police official and also mentioned that they have produced satakhats along with the said false applications. If description of the document at page 291 vide Sr. No. 10 is perused, it would appear that Nareshbhai Kikubhai Desai has submitted an application before Police Sub-Inspector, Shri M.M. Parmar of Piplod Chowki, on 10-9-2007. In both these documents prepared by the original complainant-

Rameshbhai Navadia, it is mentioned that the accused Nos. 2 and 3 herein have submitted false applications before the concerned Police Stations. In my view, if one would file an application drawing the attention of the concerned police official, it can be said that it is nothing but a complaint alleging grievances against the person mentioned therein and this is an admission on the part of the original complainant himself and no further document is required to come to the conclusion that accused Nos. 2 and 3 herein have moved the criminal machinery first in point of time compared to the original complainant-Rameshbhai Navadia. No doubt, the complaint dated 17-7-2007 as submitted by learned advocate, Mr. P.P. Majumdar is not forthcoming on record. If documents shown at Sr. No. 13 as well as Sr. No. 17 shown at para 12.1 of this order are perused, it can be seen that though complaint dated 17-7-2007 referred above is not forthcoming on record, it can satisfactorily be derived that prior to 5-11-2007, which is the day on which original complainant has filed complaint against accused Nos. 2 and 3 herein, original accused Nos. 2 and 3 have filed complaints on 17-7-2007 as well as on 3-8-2007 against the original complainant herein-Rameshbhai Navadia. The document at Sr. No. 13 shown at para 12.1 of this order is the application dated 23-1-2009 written by the Assistant Commissioner of Police, "E" Division, to the Chief Judicial Magistrate, Surat, seeking relief to grant "C" summary in the complaint filed by accused No. 3 herein being I.C.R. No. 777 of 2008 registered with Umra Police Station against the original complainant-Rameshbhai Navadia and others. Order dated 28-12-2011 passed below the said application at Sr. No. 13 shown at para 12.1 by the learned Chief Judicial Magistrate, Surat, is at Sr. No. 17 shown at para 12.1. The entire order passed by the learned Chief-Judicial-Magistrate dated 28-12-2011 below the application requesting for "C" summary is little bit lengthy one, but it is necessary to reproduce its translated version with a view to put the clear picture on record. Same reads thus:

"Brief facts of the case of the complaint are that complainant Nareshbhai Kikubhai Desai has purchased land being revenue survey No. 392(B) of mauje village Vesu by Satakhat, i.e. Agreement to Sell, from Hanskamal Grovar on 2/7/99. Original owner of the said land was Gandabhai Govanbhai Patel. During his lifetime, he had sold this land to Hanskamal Grover on 14/12/88 and also had executed a General Power of Attorney to Hanskamal Grover regarding rights of this land and on the basis of that General Power of Attorney, the complainant had purchased the said land from Hanskamal Grover.

Thereafter, on a dispute having taken place about the said land, a Regular Suit No. 702/91 came to be filed, wherein original owner Gandabhai Govanbhai and all members of his family had appeared in the suit, in which the parties had arrived at a compromise which was taken on record and accordingly the Ld. Court below decreed the same on 11/10/99. On the same day, i.e. on 11/10/99, the original agriculturist Gandabhai Govanbhai and his family members again executed a General Power of Attorney in the name of Hanskamal Grover and in support of this fact, original owner Gandabhai Govanbhai, his son Kantibhai Gandabhai Patel and his family members also signed and affirmed the same.

Original owner Gandabhai Govanbhai Patel had received payment towards the land bearing revenue survey No. 392(B) of mauje Vesu for which he had also issued the acknowledgment receipt on 26/10/99. Thus, the present complainant had purchased 15000 sq. yards land out of revenue survey No. 392(B) of mauje village Vesu from Hanskamal Grover by way of Agreement to Sell (Satakhat), however, at the relevant time, the same was not registered in the name of complainant in record of rights. The complainant then got converted the said land into non-agriculture land. All these facts are known to original owner Gandabhai Govanbhai Patel and his family members. Since then, the said land is in the possession of present complainant.

Thereafter, Gandabhai Govanbhai Patel, the original owner of the said land died in the year 2005, however his name was continued in the record of rights of the said land and therefore, the names of his direct heirs were entered in the record of rights. Thereafter, in order to extort more money, heirs of the original owner Gandabhai Govanbhai-Kantibhai Gandabhai Patel, his family members and their accomplices by executing false power of attorney created forged document of the said land of the complainant and on the basis of which they repeatedly executed bogus deeds of this land to other persons. Thus, the accused persons have fabricated documents and used them as true documents and thus they have committed breach of trust and fraud with the present complainant. As all the accused persons have conspired to usurp valuable land of the possession and ownership of the complainant, he gave a written complaint to the Police Commissioner, Surat on 17/7/07 to initiate legal procedure against all accused persons u/ss. 465, 467, 468, 471, 406, 420, 120(B) 114, 34 of IPC and under Land Grabbing Act.

As the Office of C.P., Surat received the said complaint, the C.P. had written a letter on 19/7/07 to Umra Police Station to investigate the same and submit report. In that connection, PSI of Piplod Police Chowki, Umra Police Station sent a report to Deputy Police Commissioner, Zone-2, Surat on 16/10/07, wherein it is clearly stated that the accused persons have executed false affidavits, forged documents and committed criminal acts to extort more money and the fact is also clear that it was requested therein to pass appropriate order as the accused persons have committed the offence. It appears from the record that thereafter, the complainant of this case submitted a written complaint on 3/8/07 to the Commissioner of Police, Surat to take action against total 11 accused persons regarding false and fabricated documents. Thereafter, the P.I. of Umra Police Station has submitted a report to Deputy Commissioner of Police, Zone-2, Surat on 1/11/07 regarding the complaint of the complainant, wherein it is clearly stated that the said land is under the possession of the complainant/applicant and the accused persons of this case are not in any way owner or have rights in the said land. Despite that, false affidavits and forged documents were prepared to extort more money for the land and committed criminal act by using the same as genuine documents and it is also stated therein to grant permission to register offence against the accused persons. Thereafter, Umra Police registered the FIR

against the 11 accused persons in I.C.R. No. 777/08 under sections 406, 420, 465, 467, 468, 471, 120(b) etc. of the IPC and started the investigation. It is noteworthy here that as per the report of I.O.-P.I. of Umra Police Station dated 16/10/07 and report of P.I. of Umra Police Station dated 1/11/07, report has been sent to the Deputy Commissioner of Police, Zone-2, Surat that all the accused persons have committed offence as stated in the complaint. Both these reports are prepared after considering the civil suits etc. and as per that investigation, as the accused persons have committed the offence. FIR has been registered against the 11 accused persons on 17/9/2008 by Umra Police vide I.C.R. No. 777/08.

Thereafter, on the basis of the report of the PSI-the I.O., the P.I., Umra Police Station made a recommendation on 08/12/08 to the ACP, "E" Division, Surat for granting "C" Summary in the case of this FIR, on this ground, the ACP, "E" Division, Surat has made this application before this court on 23/01/09 for granting "C" summary in the case of Ist C.R. No. 777/08 of the Umra Police Station. The complainant has raised a strong objection against this and written arguments for not granting "C" Summary have been submitted on 06/01/11 in this case of investigation, this has been also taken in reading and heard the Id. Advocate for the prosecution.

It is a notable fact in this case that in the case of Ist C.R. No. 777/08 of the Umra Police Station whatever proceedings of investigation which have been done by the I.O. after the registration of FIR have been done absolutely wrong against the report of the I.O. dated 16-10-07 and report of P.I. dated 01-11-07, the report which has been made to grant the "C Summary as no offence is constituted in this case and it is a civil offence, is not admissible considering the aforesaid facts.

Further, it is notable that a copy of the order which has been passed on 25/11/11 in the case of RTS Appeal No. 343/08 in favour of the complainant, has been produced in this case, the said appeal was filed by accused No. 10 in the present FIR, said appeal has been rejected by the Court of RTS, Surat and in this RTS appeal, the Revenue Court has stated that all the facts of the complainant are true. Considering the order of the said RTS appeal also, it is transpired on the record that the accused persons have committed the offence, under the circumstances as there is a civil dispute between the parties, it is not just to call for "C" summary from the I.O. and to make recommendation thereof and to give present report to grant it and it is also not admissible. If the I.O. clearly states in his earlier reports on the basis of the investigation that the offence is constituted, then he must carry out the legal proceedings against the offence because, prima facie, it has been found from the ancillary papers of "C" Summary that the accused persons have committed offence. It is said to be the conscious negligence towards duty to produce reasons of civil dispute and not to carry out any proceedings against the serious offensive act as per the complaint and it can not be taken easily and in the large interest of justice, all submissions made on

behalf of the complainant being lawful, admitted and following final order is passed:

ORDER

In the case of Ist C.R. No. 777/08 of Umra Police Station, the application filed by the ACP, "E" Division, Surat for granting "C" Summary and Final Report No. 645/08 produced by the I.O. in this case are hereby "rejected".

It is hereby ordered to complete the investigation in the case of Ist C.R. No. 777/08 of Umra Police Station within two months from the date of this order by the P.I., Umra Police Station and submit the report in this court.

The D.C.P., Zone-2 Surat is hereby directed to monitor the investigation of the offence of Ist C.R. No. 777/08 of Umra Police Station.

A yadi of this order be written to the C.P., Surat.

The copy of whatever documentary evidences-correspondence which have been mentioned in this order be kept with this application and order and all the original papers of "C" Summary be returned to the PI, Shri Umra Police Station for investigation.

Pronounced in the open court today on 28th December, 2011.

(emphasis supplied)"

11.4 The broad glaring facts considered by the learned Chief-Judicial-Magistrate are summarized below:

- i) Nareshbhai Kikubhai Desai-accused No. 3 herein, had filed complaint on 17-7-2007 before Police Commissioner, Surat, against the original complainant-Ramesh Navadia.
- ii) The Commissioner of Police, Surat, had forwarded the complaint dated 17-7-2007 for inquiry and report vide letter dated 19-7-2007.
- iii) The PSI, Piplod Police Chowki of Umra Police Station, had forwarded inquiry report dated 16-10-2007 to the Deputy Police Commissioner "Zone-2", Surat.
- iv) On 3-8-2007, Nareshbhai Kikubhai Desai-accused No. 3 herein, had filed complaint in all against 11 accused for creating false, bogus and forged documents related to land in question.
- v) PI, Umra Police Station, Surat, had forwarded his report to Deputy Police Commissioner, "Zone-2", Surat, seeking approval/permission to register offence against the accused of said complaints on 1-7-2007. It is pertinent to note at this juncture that the said date 1-7-2007 is very important and significant. It is not under dispute that the original complainant-Rameshbhai Navadia had filed complaint on 5-11-2007 and they are also claiming that they have initiated criminal action first in point of time, but the police had not registered his

complaint because of pressure of accused Nos. 2 and 3 herein.

vi) The Court had also considered on the basis of the report dated 16-10-2007 of PSI and report of PI dated 1-11-2007 of Umra Police Station, which had been forwarded to Deputy Police Commissioner, "Zone-2", that civil suits have been filed against each other and accordingly, against 11 accused, FIR vide I.C.R. No. 777 of 2008 was registered on 17-7-2008. The date 17-7-2008 is very significant because thereafter on 19-7-2008, the original complainant-Rameshbhai Navadia had filed second complaint against accused Nos. 2, 3, 4 and 6 herein.

vii) It was then observed by learned Chief Judicial Magistrate that P.I., Umra Police Station, had requested on 8-12-2008 the Assistant Police Commissioner, "E" Division, to grant "C" summary and accordingly, the said Assistant Police Commissioner, "E" Division, Surat, had submitted application as shown at Sr. No. 13 of para 12.1 of this judgment.

viii) After considering each aspect, the learned Chief-Judicial-Magistrate had passed the order on 28-12-2011 rejecting the application for "C summary at Sr. No. 13 of para 12.1 filed by the Assistant Commissioner of Police, "E" Division, and the final report of I.O. No. 645 of 2008 directing P.I., Umra Police Station, to complete investigation within two months and submit the report before the said Court so far as I.C.R. No. 777 of 2008 is concerned. It was also directed that monitoring of the said investigation related to I.C.R. No. 777 of 2008 be carried out by DCP, "Zone-2", Surat. It was also directed that keeping the photocopy of the original documents/correspondences are on record of the said case, all the original papers produced along with application shown at Sr. No. 13 of para 12.1 be forwarded to P.I., Umra Police Station, for further investigation.

11.5 If the above order is perused, it would be clear that in the portion emphasised by this Court, it is clearly observed that the complainant, Nareshbhai Kikubhai Desai of the said proceeding had filed a written complaint on 17-7-2007 before the Police Commissioner, Surat City, under sections 465, 467, 468, 471, 406, 420, 120(b), 114 and 34 of Indian Penal Code against all the accused therein out of which, the original complainant-Rameshbhai Navadia seems to be one of the main accused. It further appears from the said order that Umra Police has registered I.C.R. No. 777 of 2008 on 17-9-2008. As stated above, the second complaint appears to have been filed by the original complainant-Rameshbhai Navadia on 19-9-2008. Both these dates are very significant and important because after registration of the complaints vide I.C.R. No. 777 of 2008 on 17-9-2008, on the second day, i.e. on 19-9-2008, the original complainant-Rameshbhai Navadia had filed second complaint against only four persons. Thus, it appears that on the basis of the complaint dated 17-7-2007 filed by accused Nos. 2 and 3 herein, criminal action and police machinery was put into motion and therefore, the complaints filed thereafter by the original complainant-Rameshbhai Navadia on 5-11-2007 and 19-9-2008 are nothing but counterblasts to the complaints filed by the accused Nos. 2 and 3 herein prior in point of time just to save his skin and that too after the land in question was sold much prior

to 5-11-2007. The aspects as to whether land in question alleged to have been purchased by the original complainant-Rameshbhai Navadia through registered sale-deed on 21-11-2006 and the said land appears to have been sold on 3-4-2007 will also be dealt with a little later. Under the above circumstances, the submission made by learned senior Advocate that it is the original complainant-Ramesh Navadia, who had first geared up the police machinery and after about more than 10 months on 17-9-2008, the complaint was filed by accused Nos. 2 and 3 herein cannot stand even for a second, as discussed hereinabove.

12. Thus, it appears that complaint dated 17-7-2007 filed by accused No. 3 herein has been registered as I.C.R. No. 777 of 2008 on 17-9-2008 and after the intervention of learned Chief-Judicial-Magistrate, Surat, who passed the order on 28-12-2011, charge-sheet had been filed on 15-6-2012 against the following persons:

(1) Names of the accused shown in Column No. 1 of the charge-sheet:

- 1) Kantilal Gandabhai Patel
- 2) Rasik Kantilal Patel
- 3) Hitesh Kantilal Patel
- 4) Rajeshbhai Kantilal Patel
- 5) Babubhai Manjibhai Gabani
- 6) Nathabhai Ranchhodbhai Jivani
- 7) Keyur Manibhai Balar
- 8) Jayeshbhai Govindbhai Balar (Patel)

(2) Names of accused shown in column No. 2 of the said charge-sheet:

- 1) Rameshbhai Vithhalbhai Navadia
- 2) Girishbhai Kantibhai Patel
- 3) Bhanuben, Widow of Kantibhai Gandabhai Patel
- 4) Nanduben, Widow of Ratilal Makanjibhai Patel and Daughter of Gandabhai Govanbhai Patel
- 5) Rakhiben alias Ragiben, Wife of Prakashbhai Patel and Daughter of Kantilal Gandabhai Patel.

12.1 It appears that accused No. 7, legal heir and representative of Gandabhai Patel and accused No. 10 have respectively filed Special Criminal Application No. 1008 of 2012, Criminal Misc. Application No. 4189 of 2012 and Criminal Misc. Application No. 4191 of 2012 and the petitioners in each of the above referred petitions had sought quashing of the FIR registered vide Umra Police Station I-C.R. No. 777 of 2008 and the same were disposed of by the common oral order

dated 25.10.2013 by this Court. Relevant paragraph Nos. 16 to 19 read as under:-

"16. Nonetheless, at this stage, when the court is considering a quashing petition after the charge-sheet has been filed, it would be relevant for the court to look into all the charge-sheet papers to examine whether there is any material to substantiate such allegation of forgery, thereby justifying invocation of the provisions of 465, 467, 468 and 471 of the Indian Penal Code. In this regard, a perusal of the documents on record reveal that the power of attorney has been executed by the heirs of the original owners in favour of Babubhai Manjibhai Gabani, based upon consent letters given by Kaminiben and Ramaben, the widows of Hans Kamal Grover. However, Ramaben Hans Kamal Grover has in her statement before the police stated that she has not executed any such consent letter and that Rameshbhai Navadia has fabricated such consent letter without her knowledge. Thus, there is material on record to suggest that the consent letter issued by Ramaben Hans Kamal Grover has been fabricated. Under the circumstances, even if it were to be accepted that the power of attorney executed by the heirs of the original owner is not a forged document, the material on record does reveal that the consent letter issued by Ramaben is a forged one. Therefore, at this stage, while considering a petition for quashing, prior to the framing of the charge, it is not possible for the court to say that the offence of forgery is not made out on the material on record.

17. Insofar as the offence of cheating as envisaged under section 420, IPC is concerned, on the allegations made in the first information report, it is apparent that the original owner and his heirs had induced the first informant to part with valuable consideration, prior to giving up their rights in the disputed land. However, thereafter, the original owners have backed out and have executed another power of attorney for execution by a sale-deed in favour of Rameshbhai Navadia, in breach of the agreement with the first informant. Under the circumstances, at this stage, it cannot be said that the accused, right from the inception, did not have any intention of cheating the first informant, so as to rule out commission of the offence under section 420, IPC.

18. As regard commission of the offence under section 406, IPC on the allegations made in the first information report, it is apparent that an agreement had been entered into between the original landowner and his heirs and the first informant Hans Kamal Grover and Anil Taneja to the effect that the first informant would pay consideration to the original owner and Anil Taneja whereupon the original owners and Anil Taneja would give up all right, title and interest in the subject land. It was pursuant to such agreement that the consideration had been paid by the first informant to the original owners and Anil Taneja. However, since at the relevant time it was not possible to transfer the land, a power of attorney came to be executed in favour of Hans Kamal Grover. However, upon the death of Hans Kamal Grover, the heirs of the original land owner sold the land to Ramesh Navadia. Thus, it cannot be stated that the

offence of criminal breach of trust as envisaged under section 406, IPC is not made out.

19. On behalf of the petitioner in Special Criminal Application No. 1008/2012, it has been contended that he is a bona fide purchaser who has purchased the land from the third purchaser. That originally, the land was purchased by Rameshbhai Navadia who in turn had sold the land to Nathabhai Ranchhodbhai Jivani. Nathabhai Ranchhodbhai Jivani had sold 50% of the land to Jitendra Shamjibhai Vaghasia and Rameshbhai Shamjibhai Vaghasia, from whom the said petitioner had purchased the land with valuable consideration. In this regard, though in the first information report, no allegation has been made against the said petitioner, in the charge-sheet, he has been arraigned as accused No. 7. From the statement of Jitendra Shamjibhai Vaghasia recorded on 24th March, 2012 by the Investigating Officer, it is revealed that Nathabhai Ranchhodbhai Jivani along with his group and relatives sits at the office by the name of Balar Exports and all of them are engaged in the business of sale and purchase of land. The said Jitendrabhai along with his brother Rameshbhai, time and again used to visit their office (Balar Exports), where Nathabhai Ranchhodbhai Jivani, Nathabhai's brother-in-law Manubhai, Jivrajbhai Balar's son Keyur, Keyur's paternal uncle's son Jayesh Govind Balar and Keyur's maternal uncle Ramesh Vithalbhai Navadia as well as Keyur and Jayesh's father's first cousin Babubhai Gabani were all closely connected with each other and together used to handle the business of dealing in land as partners. That it was at the instance of all the accused that he and his brother had purchased the disputed land and it was when they found that the title of the land was not clear and that civil proceedings were pending in respect thereof, that they had approached the said accused persons and at their instance they had sold the land to the petitioner Keyurbhai Balar, who was also one of their accomplices. Thus, in the present case when section 120B, IPC has been invoked, having regard to the material on record, it cannot be stated that the offences as alleged in the first information report are not made out. Under the circumstances, no case has been made out so as to warrant interference in exercise of powers under section 482 of the Code."

[emphasis supplied]

From the above observations made by the Court, we can see the close connection with each other who used to handle the business of dealing in land matters as partners. The petitioner Keyurbhai Manubhai Balar was accused No. 7, who alleged to have purchased the land in question from Jitendra Vaghashia and Ramesh Vaghashia. Petitioners of Criminal Misc. Application No. 4189 of 2012 referred hereinabove were the legal heirs and representatives of deceased Gandabhai Patel. Rameshbhai Vitthalbhai Navadiya-original complainant was the petitioner of Criminal Misc. Application No. 4191 of 2012.

13. As referred above, the learned Chief Judicial Magistrate had passed the order on 28-12-2011 below the application which was filed by the Assistant Commissioner of Police, "E" Division, as mentioned at Sr. No. 17 of para 12.1 of

this judgment. Meanwhile, on 10-5-2011, the original complainant-Rameshbhai Navadia, had filed third complaint which was investigated by the Assistant Commissioner of Police, "E" Division, and the said official has prepared the report on 16-7-2011 as mentioned at Sr. No. 16 of para 12.1 of this judgment and forwarded the same to the Deputy Commissioner of Police, "Zone-2", Surat City, and ultimately, the Deputy Commissioner of Police, "Zone-2" and the Additional Commissioner of Police, Surat, went through the same and gave a decision expressing their opinion and the said report has been ordered to be filed. Now drawing attention of this Court on the above-referred report of Assistant Commissioner of Police dated 16-7-2011, learned Senior Advocate for the original complainant-Rameshbhai Navadia further drew attention of this Court on the document mentioned at Sr. No. 2 in para 12.1 and submitted that the same is the explanation given by advocate, Mr. Hitesh Laiwala, in response to summons dated 25-9-2008 issued under section 160 of Cr.P.C. It is clear from the same that he has no knowledge regarding the satakhat between Hans Kamal Grover and Ritaben Desai alleged to have been executed on 2-7-1999. It is the submission of learned Senior Advocate for the original complainant herein that when advocate, Mr. Hitesh Laiwala, has specifically stated in his explanation clarifying that said satakhat was not handed over to him for his custody and he has no knowledge about the said satakhat, then it gives all the strength to the allegations made by the original complainant-Rameshbhai Navadia that said satakhat has been fraudulently prepared by Ritaben Desai, accused No. 2 herein. In light of this submission, I have gone through the preliminary inquiry report dated 16-7-2011 prepared by the Assistant Commissioner of Police, "E" Division, Surat, as well as copy of explanation of advocate, Mr. Hitesh Laiwala, dated 26-9-2008 at page 255 and in turn, satakhat dated 2-7-1999 mentioned at Sr. No. 1 in para 12.1. It is mentioned in para 10 of the said satakhat dated 2-7-1999 that any dispute between the parties relating to satakhat will be referred to the arbitrator, advocate, Mr. Hitesh Laiwala, in case of Hans Kamalbhai and to the arbitrator, advocate, Mr. K.C. Desai, in case of Ritaben, accused No. 2 herein. It is mentioned in para 12 of the said satakhat that for the safety of both the parties, the said satakhat should remain in the custody of advocates, Mr. Hitesh Laiwala and Shri K.C. Desai after putting signatures. I am aware of the fact that right now I am not investigating whether the said satakhat dated 2-7-1999 is genuine or fraudulent but when during the course of investigation, if concerned Assistant Commissioner of Police, "E" Division, or any other police official succeeded in getting the explanation of advocate, Mr. Hitesh Laiwala, who was for Hans Kamal Grover, then in that case, in my view, he should put his effort to get such explanation or statement related to advocate, Mr. K.C. Desai, who would remain as arbitrator on behalf of Ritaben Desai, accused No. 2 herein. In short, it appears that halfheartedly, preliminary report appears to have been prepared by the Assistant Commissioner of Police, "E" Division, dated 16-7-2011, whose earlier report dated 23-1-2009 for granting "C summary in complaint registered vide I.C.R. No. 777 of 2008 was heavily contested by accused Nos. 2 and 3 herein is the submission of learned advocate,

Mr. Majumdar for the petitioners and there appears force and substance in it. If this issue is looked at in somewhat different way considering the dates of satakhat between Hans Kamal Grover and Ritaben Desai, as referred at Sr. No. 1 of para 12.1 and considering the copy of sauda-chiti between complainant-Rameshbhai Navadia and Hans Kamal Grover dated 9-12-1999 as mentioned at Sr. No. 3 of para 12.1, it is clear that said sauda-chiti appears to be subsequent in point of time and if at all any fraud has been committed by Ritaben Desai, accused No. 2 herein, then the said fraud was alleged to have been committed by her on 2-7-1999 on which date, there was no transaction between Hans Kamal Grover and complainant-Ramesh Navadia. Moreover, it is important to note that neither Hans Kamal Grover or his heirs nor heirs of Gandabhai Govanbhai nor has any other person alleged that fraudulent transaction has been made by Ritaben Desai, accused No. 2 herein, except the original complainant-Rameshbhai Navadia. When the persons, who are directly affected, have no grievance regarding the said satakhat dated 2-7-1999 then, in my view, the original complainant-Ramesh Navadia, who has purchased the land in question on 21-11-2006 and sold the same on 3-4-2007 as mentioned in para 12.2 hereinabove, has no right at all because on similar allegation, the original complainant-Rameshbhai Navadia has filed Special Civil Suit No. 262 of 2011 against most of the accused herein, which was rejected under Order-7, Rule-11 of Civil procedure Code vide order dated 22-6-2012. Referring to para 10 of the said suit at page 139, the original complainant-Rameshbhai Navadia has sought a relief inter alia to declare that the defendants-original accused Nos. 2 and 3 herein have no interest over the suit property and as per the sale-deed dated 21-11-2006 read with Correction Deed dated 11-4-2007, the plaintiff of the said suit was only the owner and in possession of the suit property. Another prayer sought by the original complainant-Rameshbhai Navadia was to the effect that transactions of satakhat dated 2-7-1999 are null and void as the same were fraudulently created in collusion with rest of the defendants of said suit and hence, the Confirmation Deed and Assignment Deed respectively registered vide Nos. 13700 and 8716 be declared as false, illegal, without any force and have been created without any consideration and hence, to be declared as null and void. Third prayer was to restrain the defendants from creating any obstruction in the land in question resulting into nullifying the ownership and possession of the plaintiff of said suit. It is not under dispute that in the said suit, the defendants more particularly accused Nos. 2 and 3 have appeared and contended inter alia that Rameshbhai Navadia has already transferred the property vide Deed No. 4466 dated 3-4-2007 read with amendment in the sale-deed No. 4818 dated 11-4-2007 to Nathabhai Ranchhodbhai Jivani, a third party to the said suit, and accordingly, the plaintiff ceased to be the owner having no right, title or interest in the property and having suppressed the said material facts in the said proceedings, the plaintiff of the said suit has no right to adjudicate the issue raised by him in the said suit. It is pertinent to note that on merits, the Court has decided the said application and passed order on 22-6-2012 below the application Exh. 21 whereby the plaint was rejected under

Order-7, Rule-11(a) of Civil Procedure Code, 1908. It was also directed in the said order that the plaintiff to pay Rs. 2,000/- by way of compensatory costs for initiating such vexatious proceedings against the defendants under section 35A of Civil Procedure Code, 1908. It is to be noted that said order has been challenged by the original complainant-Rameshbhai Navadia by way of First Appeal No. 2400 of 2012 (page 146) wherein a Division Bench of this Court decided the said issue vide order dated 31-7-2012 on merits by a detailed order. Relevant paras 13 to 19 of the said order read as under:

"13. If the aspect of material facts it to be considered as observed earlier, it appears to us that the factum of transfer of the property and cessation to have any interest in the property after the execution of the registered sale deed in favour of Nathabhai Ranchhodbhai Jivani by the plaintiff, was material fact having direct bearing to the prayers made in the plaint. Further, if the said fact is admitted by the plaintiff before the trial court and so is before this court, if considered with the averments made in the plaint read with the statutory provisions of the Transfer of Property Act, it cannot be said that there was any valid cause of action in law for the plaintiff to file the suit for the reliefs pertaining to the suit property which is already transferred and all interest is conveyed in favour of some other party as back as in the year 2007.

14. A faint attempt was made by the learned counsel appearing for the appellant to contend orally that it is the duty of the plaintiff to convey clear title in favour of the purchaser Nathabhai Ranchhodbhai Jivani and therefore, to clear out the clog over the title of the plaintiff as they existed prior to the sale deed, the suit has been filed with bona fide purpose.

15. We cannot countenance the submission for two reasons; one is that there is not a whisper for such purpose in the averment made in the plaint nor such was contended before the lower court. The another aspect is that once the property is transferred and the vendor has ceased to have any interest over the property, if any clog further continues in the property, the purchase may have remedy available in law not the vendor who has ceased to have interest in the property.

16. The attempt was made by the learned counsel for the appellant to contend that the factum of transfer of the property by registered sale deed dated 5.4.2007 read with the correction deed dated 11.4.2007 be permitted to be on record by allowing the plaintiff appellant herein to amend the plaint and therefore, it may not result into suppression of any fact which as per the plaintiff is not material fact but even if found to be material fact, it may not be said as suppression of the material fact.

17. The surprising aspect is that no reply is filed before the lower court to the application Exhibit 21 by the plaintiff nor any motion was made before the lower court for amendment in the plaint prior to the hearing of the application Exhibit 21 or even simultaneously. Under these circumstances, when the suit is already rejected, we cannot grant such permission for amendment of the plaint, but the

fact remains that the statement is made on behalf of the plaintiff-appellant for admission of the fact of transferring the property by registered sale-deed in favour of Nathabhai Ranchhodbhai Jivani is considered to find out as to whether there is any valid cause of action in law to the plaintiff and also to consider as to whether the lower court could be said as justified in exercising the power under Order 7, Rule 11(a) of CPC or not.

18. In view of the aforesaid, we find that the ultimate conclusion recorded by the lower court for rejection of the plaint since there was no valid cause of action does not call for any interference. The cost in our view has rightly been awarded by the lower court.

19. We leave the party to resort to the appropriate proceedings if otherwise permissible in law for appropriate action for suppression of material fact or misuse of the process of law or otherwise. At that stage, the rights and contentions of both the sides shall remain open."

13.1 As observed by the Division Bench of this Court in para 19 above, appropriate action for suppression of material fact or misuse of the process of law or otherwise was kept open to be resorted to by way of appropriate proceedings, if otherwise permissible in law. On the above issue, learned Senior advocate for the original complainant-Rameshbhai Navadia submitted that the Court concerned has dismissed the suit on technical plea under Order-7, Rule-11(a) of C.P.C. but the issue involved in the said suit was not adjudicated by trial and not decided on merits and, therefore, it has nothing to do with the complaint preferred by the original complainant-Rameshbhai Navadia and that too after getting sanction of the Hon"ble Apex Court. I do not find any substance and merit in the said submission because, as such, if the order of the Division Bench of this Court in First Appeal No. 2400 of 2012 is perused, it can be seen that Division Bench has exposed the conduct of the original complainant-Rameshbhai Navadia and the portion reproduced hereinabove speaks itself a lot.

13.2 At this juncture, it is important to note that the land which was purchased by the original complainant-Rameshbhai Navadia on 21-11-2006 through registered sale deed appears to have been sold by Power of Attorney Holder of Gandabhai Govanbhai which was alleged to have been given by said heirs in favour of Babubhai Manjibhai Gabani. On perusing para 12.2 above, it would reflect details of land in question changing hands in quick succession i.e. in between the period 21-11-2006 and 9-8-2009. From the said tabular form, it is clear that after 3-4-2007, or to be precise, after 11-4-2007, as the land in question was sold by the original complainant-Rameshbhai Navadia to Nathabhai Jivani, all interest in the land in question has been transferred and the vendor i.e. Rameshbhai Navadia has ceased to have any interest over the property and if at all any other grievance exists in the said property, then the new purchaser may have some remedy available in law but not the vendor, who ceased to have interest in the property. So far as above referred order passed in First Appeal arising from Special Civil Suit filed by the original complainant-Rameshbhai

Navadia is concerned, as it does not appear from the submission of learned Senior Advocate for the original complainant-Rameshbhai Navadia that order passed in First Appeal has been challenged before any higher forum and accordingly, said litigation has attained finality.

14. It is not under dispute that Anil Dharamsing Taneja has filed Regular Civil Suit No. 702 of 1991 before the Court of 5th Joint Civil Judge, Surat, against Gandabhai Patel and Hans Kamal Grover. A compromise was arrived at between the parties to the said suit and a decree was also passed on 25-10-1999 on the strength of said compromise and permanent injunction was also granted. It is the case of original accused Nos. 2 and 3 herein that in pursuance of said compromise, Gandabhai and his family received total consideration from Shri Hans Kamal Grover and they handed over all rights stating it on affidavit that compromise is acceptable to them. Likewise, by the said compromise, Anil Taneja vested all rights in respect of said land to Shri Hans Kamal Grover. Now for the reasons best known to Shri Anil Taneja, he has filed Recall Application No. 40 of 2012 to recall order dated 25-10-1999 in Civil Suit No. 702 of 1991 referred above. Said application was rejected on 19-9-2013 after hearing the parties. Special Civil Application No. 14810 of 2013 preferred against the said order was dismissed by judgment and order dated 12-8-2014 by this Court. When this matter was kept as CAV, on 26-9-2014, learned advocates, Mr. P.P. Majmudar and Mr. A.M. Dagli for the original accused submitted that when the order passed in Special Civil Application No. 14810 of 2013 was challenged by Anil Taneja, the petitioner therein, before the Hon"ble Apex Court, he did not succeed there and accordingly, order passed by this Court against Anil Taneja has attained finality. I have conveyed both of them to come with advocate for the otherside that day itself but they did not come before this Court till rising of the Court at 5.00 p.m.

15. It is not under dispute that so far as the land in question is concerned, accused Nos. 2 and 3 herein have filed Regular Execution Application No. 12 of 2011 before the Court of learned Senior Civil Judge, Surat, for execution of the decree dated 25-10-1999 passed in Regular Civil Suit No. 702 of 1991. If tabular format in para 12.2 above is perused, it would appear that on 9-8-2009 vide registered sale deed, 50% share of the land in question of Jitendra Vaghasia and Rameshbhai Vaghasia was alleged to have been sold and transferred to Keyur Manubhai Balar. Said subsequent purchaser has filed an application to join them as respondents in above-referred execution proceedings, which was rejected vide order dated 14-6-2012 against which, Special Civil Application No. 9630 of 2012 was preferred wherein this Court vide order dated 25-9-2012 has observed that purchasers of the said land in question are not bona fide purchasers. Paragraphs 5 and 6 of the said order read as under:

"5 The contention of the learned counsel for the petitioners is to be examined in the context of the factual scenario of the case, which establish that the petitioners are third purchasers after the decree was passed by the trial court in Special Civil Suit No. 702 of 1991 which came to be decreed as back as on

25.10.1999 and the said decree attained finality. In the above circumstances, the assignees of the decree have undertaken execution proceeding in which the petitioners wanted to be joined as party respondents to protect their interest, which was considered by the Court below by examining the material on record including independent action taken by the petitioners by filing Special Civil Suit No. 445 of 2011 as well as another similar situated person, like the petitioners, also filed Special Civil Suit No. 262 of 2011 and that no relief was granted in the above suits. So far as the finding of the Court below about awareness and knowledge of the decree passed by the trial court while purchasing the suit property thereafter by the petitioners is concerned, it remains undisputed and, in the above context, if the Court below has held that the petitioners are neither necessary nor proper parties in the execution proceedings, it cannot be said that the order passed by the Court below is illegal. As regards the reliance placed by the learned counsel for the petitioners in Babu Lal Vs. Hazari Lal Kishori Lal and Others, ; Mayadhar Mallik Vs. Smt. Laxmi Mallik and Others, ; and Somnath Banerjee Vs. Smt. Arati Rani Chakraborty and Another, , it is true that the word "proceeding" may also include execution proceeding and Order 1, Rule 10 of the Code of Civil Procedure may have its applicability, but, when, considering the facts and circumstances of the case, on merit it is held by the Court below that the petitioners are neither necessary nor proper parties in the execution proceedings, such an order does not warrant any interference by this Court in exercise of power under Articles 226 and 227 of the Constitution of India.

6. In the result, this petition fails and is summarily rejected."

(Emphasis supplied)

Entry to that effect was also mutated in the revenue record being Entry No. 6987. Moreover, said subsequent purchasers have preferred Special Leave Petition No. 20848 of 2013 against the order of this Court, which has also been dismissed vide order dated 2-7-2013.

16. As referred hereinabove, learned Senior Advocate for the original complainant-Rameshbhai Navadia drew attention of this Court on the order dated 6-1-2014 passed by the Hon"ble Apex Court in Criminal Appeal No. 55 of 2014 [arising out of SLP (Cri.) No. 591 of 2013] and submitted that when the Hon"ble Apex Court has considered the preliminary inquiry report dated 16-7-2011 and permitted the original complainant-Rameshbhai Navadia giving specific direction to file FIR, then, it is clear that cognizable offence appears to have been there in the allegations levelled therein by the original complainant-Rameshbhai Navadia and this Court cannot go against the observations made by the Hon"ble Apex Court. On going carefully through the above referred order passed by the Hon"ble Apex Court, I am of the view that putting sole reliance on the decision of the Constitution Bench passed in Writ (Cri.) No. 68 of 2008 in Lalita Kumari v. Government of Uttar Pradesh, it has been directed to register the case but at the same time clarifying that no opinion has been expressed on merits and also further clarifying that it is open for the respondents to avail of the remedy

available in law to challenge the FIR. Thus, it cannot be said that this Court has made any attempt to go against the order of the Hon'ble Apex Court.

17. As discussed and as shown in tabular form in para 12.2 hereinabove, it is not under dispute that the Power of Attorney Holder of heirs of Gandabhai Patel namely, Babubhai Manjibhai Gabani, transferred the land in question to the original complainant-Rameshbhai Navadia. After registration of I.C.R. No. 777 of 2008 and after the order passed by the learned Chief-Judicial-Magistrate, Surat, dated 28-12-2011 on the application submitted by Assistant Commissioner of Police, "E" Division, Surat, charge-sheet was filed on 15-6-2012 by the police, as referred hereinabove. In the month of May, 2012, the Power of Attorney holder, Babubhai Manjibhai Gabhani (Gabani) has preferred Criminal Misc. Application No. 5160 of 2012 before this Court under Section 439 of Cr.P.C. Relevant paragraph No. 2 of the said order dated 7-5-2012, copy of which is at pages 120 to 122, passed by this Court reads as under:

"2. Learned Senior Counsel Mr. S.V. Raju appearing for the applicant submits that as far as the present applicant is concerned, he is the Power of Attorney (POA) holder which was executed by the deceased - Gandabhai in favour of Babubhai. It is submitted that as far as signature of Babubhai is concerned, it is not in dispute that no allegations are levelled against him stating that he had affixed a false signature or created or forged a document. Learned Senior Counsel Mr. Raju also submits that the applicant herein will give his full co-operation if any proceedings are initiated for cancellation of the alleged Sale Deed which took place between the present applicant and the other accused (purchasers). Considering the above aspect, it is submitted that the applicant may be enlarged on bail."

(Emphasis supplied)

17.1 From the above paragraph No. 2, it appears that learned Senior Counsel, Mr. S.V. Raju, has appeared on behalf of the applicant-Babubhai Manjibhai Gabhani (Gabani), who preferred Cri. Misc. Appln. No. 5160 of 2012. Looking to the said order, it appears that learned Senior Counsel has submitted before the Court that as far as Babubhai Manjibhai Gabhani (Gabani) is concerned, he is a Power of Attorney (PAO) holder which was executed by the deceased Gandabhai in favour of Babubhai. It was further submitted therein that as far as signature of Babubhai Manjibhai Gabhani (Gabani) i.e. Power of Attorney is concerned, it is not in dispute. It was lastly submitted therein by learned Senior Counsel that applicant-Babubhai Manjibhai Gabhani (Gabani) will give his full co-operation, if any proceedings are initiated for cancellation of the alleged sale-deed, which took place between the applicant therein and other accused (purchasers) i.e. original complain-ant-Rameshbhai Navadia herein and ultimately requested that he be enlarged on bail in the said circumstances. Moreover, learned counsels for the parties have not pressed for further reasoned order and accordingly, said application under Section 439 of Cr.P.C. filed by the Power of Attorney, Babubhai Manjibhai Gabhani (Gabani), was granted by this Court. I am of the view that

when learned Senior Counsel has submitted that the person, who has sold the property on the basis of Power of Attorney will give co-operation if any proceedings are initiated for cancellation of alleged sale-deed meaning thereby so far as the said sale-deed is concerned, the applicant-Babubhai Manjibhai Gabhani (Gabani) was within the knowledge that by way of fraudulent action, the land in question had been transferred and accordingly, it appears that he had instructed learned Senior Counsel to submit as stated hereinabove. If any advocate will submit on the above referred line, then also, it should be considered that after taking instructions on the said issue, he is making the submission and when learned Senior Counsel makes the submission as referred above, it carries more weight. In short, the above referred entire conduct in the transactions made by the original complainant-Rameshbhai Navadia, who appears to have initiated action by taking the help of above referred Babubhai Manjibhai Gabhani (Gabani), Power of Attorney Holder of heirs of Gandabhai Patel, and the subsequent transfer of land in question, as discussed hereinabove, will speak volume. Thus, it is to be noted that after selling the land in question on 3-4-2007, the original complainant-Rameshbhai Navadia realised that criminal action initiated by accused Nos. 2 and 3 herein being prior in point time would land him in great trouble and, therefore, faint attempts have been made by him by filing complaints on 5-11-2007, 19-9-2008 and 10-5-2011, just to save his skin and by way of counter, as discussed above. The half hearted allegations made in the said three FIRs or complaints do not inspire confidence and on the basis of the same, in my view, no prudent person can ever reach to a just conclusion that there is sufficient ground for proceedings against the accused, except the Assistant Commissioner of Police, "E" Division, Surat, who still thought that criminal liability is there because of collusion of original accused herein, in spite of the fact that civil actions in which identical stand was taken by all concerned had attained their finality after having the final verdict by this Court as well as the Hon"ble Apex Court. I am of the view that just to hide their malicious actions, as discussed at length hereinabove, and with an ulterior motive to satisfy their ego and to get more amount from the otherside which had been invested by them in the litigations, a final attempt of criminal threat appears to have been conveyed by him to the otherside in which the original complainant-respondent No. 2 herein Mr. Rameshbhai Navadia, has failed. Under the circumstances, all the present petitions deserve to be allowed.

All the Special Criminal Applications and Cri. Misc. Application are allowed. Complaint being C.R. No. I-99 of 2014 registered with Umra Police Station, Surat, and all consequential proceedings thereunder are quashed and set aside qua the petitioners of the above referred petitions and application. Rule is made absolute to the aforesaid extend.

17.2 It is clarified that as the observations in these petitions having necessarily made for the purpose of deciding the issues involved in these petitions may not prejudice the parties in their pending litigation.

17.3 Registry is directed to place a copy of this judgment in each matter.