

Jitul Jential Kotecha vs The State Of Gujarat on 12 November, 2021

Author: D.Y. Chandrachud

Bench: B V Nagarathna, Dhananjaya Y Chandrachud

Repo

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal Nos 1328-1333 of 2021

Jitul Jential Kotecha

.... Appellant

Versus

State of Gujarat & Ors. Etc

.... Respondent

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 This batch of appeals arises from a judgment and order dated 8 January 2019 of a Single Judge of the High Court of Gujarat. The High Court quashed an FIR 1 which was registered against the private respondents under Section 482 of the Code of Criminal Procedure 1973 2, except for the allegations against the fourth and fifth respondents under Section 385 of the Indian Penal Code 1860 3, in respect of which the investigation has been permitted to continue. FIR No I-124 of 2016 “CrPC” “IPC” 2 On 13 April 2016, an FIR 4 was registered against the private respondents under Sections 465, 467, 468 and 120B of the IPC by the Gandhigram Police Station, Rajkot on a complaint made by the appellant. The contents of the FIR are elucidated below.

3 A property located in Village Veja at Rajkot is alleged to have been allotted to Shamjibhai Jesabhai Koli by the government on account of his service in the Army. The appellant has alleged that he and his brother purchased the property for a consideration of Rs 7,75,000 and an agreement to sell was executed in their favour by Shamjibhai before a notary. An irrevocable power of attorney was allegedly executed in favour of the appellant and his brother for clearing the title to the land and for obtaining the sanction of the government. The appellant alleged that in 1999, he paid an amount of Rs 4,00,000 by a demand draft and Rs 4,00,000 in cash to the vendor. Shamjibhai is alleged to

have registered a sale deed on 19 May 1999 in favour of the appellant, his father and his brothers. Shamjibhai is alleged to have also executed a power of attorney in favour of the appellant and his father-in-law on the same date. The power of attorney mentioned that Shamjibhai had accepted the consideration for the land and had handed over possession to the appellant and his family. Shamjibhai is alleged to have executed another agreement mentioning that an amount of Rs 2,00,000 was due to be paid to him. On 9 January 2006, the Government of Gujarat granted permission for the sale of the land and a premium of Rs 13,76,000 was allegedly paid by the appellant and his family. As the power of attorney holder, the appellant's father-in-law sold the land to Om Prakash Kotecha, Mukul FIR No I-124 of 2016 Kotecha, Ketan Kotecha and his wife Deepaben and registered a sale deed in this regard. The appellant claims that he has been in possession of the property since 1999.

4 The appellant has alleged that the second and third respondents, who are daughters of Shamjibhai, instituted a suit 5 in 2011 for cancellation of the sale deed executed by Shamjibhai in favour of the appellant. The civil court by its order dated 8 February 2013 granted an interim injunction restraining the appellant from alienating, transferring or assigning the property during the pendency of the suit.

5 It is alleged that the second and third respondents executed a power of attorney in favour of the seventh respondent in relation to the property, for a consideration of Rs 5,51,000. A Memorandum of Understanding 6 was also executed stipulating that the land is to be sold for Rs 2 crores. The second and third respondents are alleged to have executed another power of attorney and MoU with the sixth respondent, against a payment of Rs 5,00,000. 6 On 20 March 2015, prior to the FIR which was registered at the behest of the appellant, an FIR 7 was registered against the appellant and the members of his family on a complaint lodged by the second respondent for offences punishable under Sections 406, 409, 420, 465, 467, 471, 447, 34, 114 and 120B of the IPC at DCB Police Station, Rajkot alleging that the property had been obtained by the appellant without payment of the entire consideration. The appellant has contended that the second respondent did not disclose that a Civil Suit No 157 of 2011 "MoU" FIR No I-11 of 2015 payment of Rs 4,00,000 was made by the appellant by a demand draft which was deposited in the account of Shamjibhai.

7 The appellant has further alleged that the fourth respondent who is the spouse of the second respondent called him to the office of an advocate to pressurize him to enter into a compromise. A sum of money running into crores of rupees is alleged to have been demanded from the appellant, stating that the lands had been sold to land mafias. The fifth respondent, the spouse of the third respondent, is also alleged to have demanded money from the appellant to arrive at a compromise. The fourth and fifth respondents are alleged to have acted as witnesses to the powers of attorney and deeds executed by the second and third respondents with third parties.

8 The appellant lodged a complaint with the Gandhigram Police Station against the respondents and a FIR 8 was registered on 13 April 2016 for offences punishable under Sections 465, 467, 468 and 120B of the IPC. The second to seventh respondents filed petitions 9 before the High Court under Section 482 of the CrPC to quash the FIR 10 registered at the behest of the appellant against them. By an interim order dated 2 May 2016, the High Court directed that the investigation may continue

but the charge-sheet be filed only with its permission. 9 The eighth and ninth respondents were not named in the FIR. Apprehending arrest, they sought and were granted anticipatory bail by the FIR No I-124 of 2016 CrI. M.A. No 9885 of 2016, CrI. M.A. No 10534 of 2016, CrI. M.A. 10612 of 2016 and CrI. M.A. No 10651 of FIR No I-124 of 2016 Sessions Court, Rajkot. Thereafter, they also filed petitions 11 for quashing of the FIR under Section 482 of the CrPC.

10 A draft charge-sheet was placed before the High Court for offences punishable under Sections 385, 389, 418, 477, 506 (2), 120B and 34 of the IPC. The draft charge-sheet also contains allegations against the eighth and ninth respondents. It is alleged that the eighth respondent who is an advocate, helped the other accused in drafting false documents – the powers of attorney and MoUs. The ninth respondent is alleged to have entered into a settlement with the second respondent on 25 February 2015 against a payment of Rs 41,51,000. 11 The petitions for quashing the FIR were allowed by the High Court by its impugned judgement dated 8 January 2019 save in respect of the investigation for offences punishable under Section 385 of the IPC against the fourth and fifth respondents. The conclusion of the High Court is extracted below:

“10.4 The upshot of the foregoing analysis and observations is that prima facie, it appears that the offence under section 385 of attempt to commit extortion is said to have been established against Karanbhai Gordhanbhai Solanki and Maganbhai Devabhai Vaghela (applicants of Criminal Misc.Application No.10534/2016). Hence, the investigation shall proceed further for the offence under section 385 against them. No offence as alleged in the FIR and draft charge sheet is said to have been established against the rest of the accused. Necessary report shall be filed in this regard as expeditiously as possible.” The High Court has held that an offence under Section 385 of the IPC is prima facie made out against the fourth and fifth respondents who are alleged to have demanded money from the appellant to enter into a compromise. The High Court S. CrI. A No. 10140 of 2016 and S. CrI. A. No. 5859 of 2016 observed thus:

“9. 1 In the present case, the contents of the FIR reveal that the daughter of Shamjibhai namely Ritaben and Savitaben have executed various powers of attorneys with other accused in order to jeopardize the right and title of the land belonging to the first informant for the purpose of extorting money. It is also alleged that before three months, the husband of Ritaben @ Ramaben had called him at the office of one advocate Mr.B.B.Mehta, for compromise, and informed him that he has already executed the title of land to land mafias and has taken the money from them, and if he wants to compromise, he will have to give crores of rupees. After, one or two days, Kalubhai called him and told that Karanbhai has informed him (Kalubhai) that the husband of Savitaben, i.e Maganbhai has demanded money in order to enter into compromise. It is also alleged that before one and half years, Karan had visited at his hotel Europine along with his broker friend Puneet Koli, and had demanded five crores from him, and also told, if does not do so, he will lodge a complaint against him and he will have to go to jail. Both these persons Magan and Karan have signed as witness in the power of attorney documents.

The first informant has alleged that Karanbhai Gordhanbhai (Applicants Solanki and Maganbhai Devabhai Vaghela of Application No.10534/2016) had contacted him and have said that the land has been transferred to land mafias and if he wants to compromise he has to part with corers of rupees. The demand of money by way of compromise will satisfy the ingredients of section 385. The foregoing analysis and observations, prima facie reveal that there is an attempt to extort money from the first informant by Karanbhai Gordhanbhai Solanki (Applicant no.1 of Cri.Misc Application No.10534/2016) husband of Ritaben @ Ramaben and Maganbhai Devabhai Vaghela (Applicant No.2 of Cri.Misc.Application No.10534/2016), who is the husband of Savitaben.” In respect of the allegations against the second and third respondents, the High Court observed that the allegation that they had executed powers of attorney and settlement deeds in favour of third parties would not constitute offences of forgery, extortion or cheating. The relevant extract of the judgement is reproduced below:

“9.2 It is not in dispute that Ritaben and Savitaben have executed various powers of attorney in favour of other accused. Ritaben has also lodged FIR against the first informant on 20.03.2015. The power of attorney reveals that the same are executed to file appropriate proceedings on their behalf in the Special Civil Suit No.157/11 and further to carry out legal proceedings pertaining to the suit land. One of the power of attorney dated 20.11.2012 reveals that Ritaben and Savitaben are paid Rs. 5,00,000/- (Rupees Five Lacs Only) towards the cost of proceedings and further it stated that if the proceedings result in their favour, then the power of attorney holders will have 50% share in the property. Thus, merely because the applicant Ritaben and Savitaben, daughters of Shamjibhai have executed power of attorney and settlement deeds with other accused, such an act will not satisfy the requirement of offence of forgery, extortion or cheating. The validity of such documents can always be examined in civil proceedings.” The High Court held that the allegations against the sixth to ninth respondents do not constitute the offences alleged in the FIR. The High Court observed thus:

“10. As far as Criminal Misc. Application No 10612 of 2016 is concerned, the applicant-accused-Ashwin Parshottambhai Lila is the power of attorney holder of Ritaben. It is alleged that he and Ritaben have also entered in to settlement deed on 07.06.2011 by which they have agreed to sell the land for Rupees Two Crores and an amount of Rs.5,00,000/- (Rupees Five Lacs Only) is also paid to Ritaben.

10.1 In Criminal Misc.Application No.10651 of 2016, applicant-accused-Kiran Parshottam Hapaliya, another power of attorney is executed by Ritaben and Savitaben in his name and a settlement deed is executed on 20.11.2012 in which it is mentioned that they have received an amount of Rs.3,00,000/- (Rupees Two Lacs) by cheque and Rs.3,00,000/- (Rupees Three Lacs) by cash from one Ashwin and Ramesh Nishit. Further it is recorded in the settlement deed that if any share of the property is effected then they will part with 50% of the same and if any compromise

is arrived then they will be paid 50% of the amount. Thus, in both the aforesaid cases no offence as alleged in the FIR or the draft charge sheet is made out against the two applicants.

10.2 In Cri.Misc.Application No.5859/2016, the name of applicant-accused Jatin Hasmukh Pipaliya does not figure in the FIR. Subsequently in the draft charge sheet he has been arraigned as an accused. It is stated that he had entered in the settlement deed dated 25.2.2015 with Ritaben for which he had paid Rs 41, 51,000/- by cheque and cash.

10.3 In Criminal Misc.Application No. 10140/16, the applicant-accused Babubhai Nanjibhai Bhokhodiya's name does not figure in the charge sheet. The role attributed to him in the draft charge sheet is that have helped the other accused in making the documents relating to power of attorney and settlement deed. Thus, even if the allegations are accepted then also no offence under section 385, 389, 418, 423, 477, 506(2), 120-B and section 34 are established against both the applicants.” The second, third, fourth and fifth respondents and the appellant have apparently settled the dispute. The High Court by its order dated 9 July 2021 quashed the FIR and the charge-sheet, including all consequential proceedings against the fourth and fifth respondents since the parties had settled the dispute. On account of the compromise, the appellant is not pressing the special leave petitions¹² against the second to fifth respondents, who are the legal heirs of Shamjibhai and their spouses.

12 On behalf of the appellant, it has been urged by Mr Nikhil Goel learned counsel that:

(i) An argument of prejudice was sought to be urged against the appellant by highlighting that the earlier FIR against the appellant (which stands quashed as of date) was registered before the DCB police station and therefore, the appellant was sent to the Gandhigram police station to register the FIR. However, as a matter of fact, it is the DCB police station which has investigated the offence against the respondents;

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(ii) The investigation conducted by the DCB police station has revealed that:

(a) there existed a pre-planned criminal conspiracy among the accused to create a dispute in relation to the title of land by executing false MoUs;

(b) the land was transferred to the appellant and his family members by Shamjibhai in 1999 through a registered agreement to sell and a power of attorney was also executed in favour of the appellant's father-in-law;

(c) a possession receipt was issued;

- (d) a consideration of Rs 8,00,000 was received by Shamjibhai;
- (e) permission for the sale of land was obtained from the government in 2006 by which time Shamjibhai had passed away; and
- (f) the power of attorney holder had then executed four sale deeds on the strength of the power of attorney after the death of Shamjibhai;
- (iii) The second respondent registered an FIR before the DCB police station after a lapse of nine years. The FIR and the ensuing charge-sheet have been quashed by the High Court on 8 July 2021 in a separate proceeding;
- (iv) Certain accused, who had not been named in the FIR, had filed quashing petitions based on the apprehension that they may be named in the charge-sheet. An apprehension of arrest may give rise to an application for anticipatory bail but not to a quashing petition at the behest of a person not named in the FIR. The fact that these accused knew that they will be named in the draft charge-sheet gives rise to the inference that the accused were in collusion with the police. The High Court should have taken serious note of the maintainability of such petitions and questioned the accused on the source of their knowledge that they will be arraigned as accused in the draft charge-sheet;
- (v) The findings of the High Court are based on the contents of the FIR and do not take into consideration the final report of the investigation under Section 173 of the CrPC that was placed before it; and
- (vi) The legal heirs of Shamjibhai and their spouses were not pressured to enter into a compromise with the appellant.

13 On the other hand, Mr Karan Bharihoke and Mr Khilan Chandrani appearing for the sixth to ninth respondents submitted that:

- (i) The FIR only contains allegations against the sixth and seventh respondents and the eighth and ninth respondents have not been named in the FIR;
- (ii) At the highest, the sixth to ninth respondents can be said to have financed the litigation as noted by the High Court in its impugned judgement;
- (iii) There is no allegation of extortion against the answering respondents;
- (iv) The powers of attorney and MoUs were executed before a notary. Thus, on the face of it, these documents cannot be termed as false or forged;

(v) The eighth respondent has been roped in only on account of having drafted the documents, which shows the frivolous nature of the allegations;

(vi) The earlier FIR against the appellant gave rise to a charge-sheet which mentioned that the powers of attorney and sale deeds were forged and on the basis of such forged documents, the appellant had obtained the permission to convert the land from new tenure to old tenure, in connivance with revenue officers;

(vii) The request for permission to file the charge-sheet dated 9 August 2017 by DCB police station merely reiterates the allegations in the FIR. Further, this document was never placed on record and is an attempt by the appellant, in collusion with the police inspector, to create a document favouring the appellant;

(viii) The FIR was registered with the Gandhigram police station and DCB police had no role to play in the investigation. Thus, the request for permission to file the charge-sheet by the DCB police station shows the influence of the appellant and the mala fide nature of the investigation conducted by DCB police station;

(ix) The draft charge-sheet was considered by the High Court in its impugned judgement, which is evident from the discussion of the offence of extortion, which bears no reference in the FIR. Further, the High Court has referred to statements and documents that were part of the draft charge-sheet;

(x) The respondents who were not named in the FIR were harassed by the police during the investigation. They had preferred an application for anticipatory bail before the Sessions Court, Rajkot, which was allowed.

Thereafter, they filed the quashing petitions before the High Court;

(xi) The civil court had allowed the application for interlocutory injunction filed by the second and third respondents. This order was challenged by the appellant before the Sessions Court, 13 under Order 43 Rule 1 of the Code of Civil Procedure 1908 but this was rejected on 22 November 2016. The appellant has moved the High Court 14 in appeal, before which proceedings are pending;

(xii) The appellant has misled the Court by claiming that Shamjibhai had registered a sale deed in his favour in 1999. The document is not registered. The power of attorney and sale deeds are forged documents and were a subject matter of a prior FIR;

(xiii) The dispute between the parties is essentially of a civil nature which has been given a criminal colour;

(xiv) The appellant has entered into a settlement with the fourth and fifth respondents, who were the only persons accused of extortion. An attempt is being made to pressurize the sixth to ninth respondents to enter into a compromise with the help of the police machinery;

(xv) The FIR was registered after a lapse of 3 years and 6 months; and (xvi) There are no allegations against the answering respondents which constitute an offence.

14 The rival contentions will now be considered.

15 Insofar as the sixth to ninth respondents are concerned, their position Civil Appeal No 32 of 2013 SCA No 5558 of 2017 before this Court in SLP (Crl) Nos 5736-5739 of 2019 is as follows:

Name of the Accused Crl. M.A. no. Date of the Respondent accused No. before the High order by the no herein Court High Court Ashwinbhai 7 Crl. M.A. No. 8 January Respondent Parshotambhai 10612 of 2016 2019 No 6 Lila Kiran 6 Crl. M.A. No. 8 January Respondent Parshottambhai 10651 of 2016 2019 No 7 Hapaliya Babubhai Arraigned S. Crl. A. No. 8 January Respondent Nanjibhai as an 10140 of 2016 2019 No 8 Bhakohdiya accused in the draft charge sheet Jatin Arraigned S. Crl. A. No. 8 January Respondent Hasmukhbhai as an 5859 of 2016 2019 No 9 Pipaliya accused in the draft charge sheet While the sixth and seventh respondents were named in the FIR, the eighth and ninth respondents were arraigned as accused in the draft charge-sheet. The allegations against the sixth to ninth respondents are that as a part of a criminal conspiracy, they colluded to execute false powers of attorney and MoUs to jeopardize the right and title to the land belonging to the appellant and were party to the extortion of money from him. It is alleged that sixth, seventh and ninth respondents executed champertous agreements with the legal heirs of Shamjibhai to finance the civil litigation pertaining to the title of the land. The eighth respondent, who is an advocate, is alleged to have helped the other accused in drafting the powers of attorney and MoUs.

16 Before we examine whether the High Court transgressed the limitations on the exercise of its powers under Section 482 of the CrPC, it will be useful to give an overview of how the proceedings have evolved.

17 An FIR 15 was registered at the behest of the appellant on 13 April 2016 for offences punishable under Sections 465, 467, 468 and 120B of the IPC. Eight persons were named as accused:

“(1) Ritaben alias Ramaben (2) Karanbhai Gordhanbhai Solanki, (3) Savitaben (4) Maganbhai Devabhai Vaghela (5) Jayaben (6) Kiran Parshottambhai Hathaliya, (7) Ashwin Parshottambhai Leela (Patel) (8) Jaimingiri Magangiri Goswami” FIR No I-124 of 2016

18 Upon the registration of the FIR, petitions under Section 482 of the CrPC were instituted before the Gujarat High Court. By an order dated 2 May 2016, a Single Judge permitted the investigation to continue but directed that no final report (under Section 173 of the CrPC) shall be submitted without the permission of the High Court. The interim order of the High Court records that it is based on two considerations:

(i) An earlier complaint had been lodged by the second respondent against the appellant. In those proceedings, a charge-sheet had been submitted against the appellant and others; and

(ii) A suit had been instituted before the Senior Civil Judge, Rajkot¹⁶ in which an interlocutory order of injunction was passed on 8 February 2013 protecting the second respondent. It was in this backdrop that the following interim order was passed by the High Court during the pendency of the petitions for quashing the FIR :

“6. The investigation in this case shall CONTINUE. The I.O. shall bear in mind, while investigating this matter, the lodgment of the earlier complaint by the present petitioners, wherein, charge-sheet has been filed against present Respondent No.2 and others and the details of the pending civil suit. Without the PERMISSION of this Court, no final report shall be submitted. The right of Respondent No.2 to file reply is kept open. Direct service is permitted.”

19 The FIR lodged by the appellant was investigated, upon which an application was moved on 9 August 2017 by the Police Inspector, DCB Police Station, Rajkot city to the Registrar General of the High Court seeking permission to file a charge-sheet. In the course of the proceedings before the High Court, Regular Civil Suit No 157 of 2011 submissions were advanced by the APP, alluding to the contents of the FIR and the charge-sheet. The charge-sheet has been described as a “draft charge- sheet” since in view of the interim order of the High Court, there was a restraint on the submission of the charge-sheet before the competent court without the permission of the High Court. At this stage, it becomes necessary to advert to the submissions which were urged before the High Court by the APP, setting out the material which had emerged during the course of the investigation, following the registration of the FIR. The submissions have been summarized in the judgment of the High Court and read thus:

“6.2 Learned APP... on instructions of the Investigating officer has submitted that so far the offences of forgery are concerned, the same are not made out against the present applicants. However, he has submitted that further investigation reveals that the offences of extortion and cheating are prima facie established against them. He has placed reliance on the statement of various witnesses in this regard.

6.3 Learned APP ... has placed reliance on the various statements of the witnesses recorded by the Investigating Officer. He has placed reliance on the statement of Jitulbhai Jentilal Kotecha and Lalbhai Koraiya recorded by the Investigating Officer on 18.07.2016. He has stated that prior eight months from today, he has called his advocate friend Harshadbhai on mobile phone, at that time, his friend Harshadbhai informed him that advocate Babubhai is with him and he wanted to talk him about the disputed land, and thereafter, he talked to said advocate.

The advocate informed him that in order to compromise, a huge money has to be paid to Karanbhai, Maganbhai etc, and when he asked about the amount, advocate Babubhai informed him that they

are demanding Rs.5,00,00,000/- (Rupees Five Crores Only) in order to enter into compromise otherwise he will enter into settlement agreement with head strong persons.

6.4 Learned APP has also placed reliance on the statement of Mr. Jenish Premjibhai Motivaras recorded by the Investigating Officer on 20. 05. 2016 in which he has stated that he was contacted by one Shri Kapilbhai Kotecha, who had taken him to one shop, wherein one person was sitting and was talking about the dealing to be done in some land, and thereafter, he informed him that, if he would like to invest in the said land, he can sign on the documents brought by him. The said persons informed him that the land belongs to two ladies and accordingly, he has prepared the compromise in his name on the stamp paper of Rs.100/-. It is submitted by Mr.Jenish Premji that thereafter, he signed the said documents pertaining to the compromise and accordingly, the said person had asked him to pay Rs.25,000/- and further Rs.10,00,000/- (Rupees Ten Lacs Only) to be paid within a period of three months. It is further stated by Mr.Jenish Premji that he did not take any receipt from that unknown persons about the amount and only received business card in which his name and address was given. It is lastly submitted by him that that unknown person had committed fraud of Rs.25,000/- (Rs.Twenty Five Thousand Only), however, he has not lodged any police complaint in that regard.

6.5 Learned APP has also placed reliance on the statement dated 21.05.2016 taken by the Investigating Officer of one Prakash Kishorbhai Jariya, who has stated that he had given Rs.90,000/- (Rupees Ninety thousand Only) to one Ashwinbhai Parshottambhai Lila on 12.04.2016, but he did not take any receipt to that effect. It is submitted by him he read in the news-paper about the incident. When he tried to contact Ashwinbhai, his mobile phone was switch off, and thereafter, he contacted Jetul Kotecha and went with him at DCB Police Station for giving statements. It is submitted by him that Ashwinbhai had given him one compromise on the stamp paper of Rs.100/- as well as copy of power of attorney.

6.6 Learned APP has also relied upon one statement of Narendrabhai Chaganbhai Nasit recorded by the Investigating Officer on 21.05.2016 in which he has stated that he was approached by one Mr.Ashwinbhai to invest in the said land and also demanded Rs.2,50,000/-

(Rupees Two Lacs and Fifty Thousand Only) for investment and accordingly, he had paid cheque of Rs.1,00,000/- (Rupees One Lac Only) on 18.11.2012 which was in the name of his brother Ramesh Chagan Nasit, and thereafter, he paid cash of Rs.1,50,000/- (Rupees One Lac Fifty Thousand only), and thereafter, he was called on 20.11.2012 at Rajkot Court to execute a compromise deed where Geetaben and Savitaben were present with their husbands. It is stated by him that Ashwinbhai thereafter was talking to the said farmers that Jitulbhai Kotecha is a Businessman and if we forced him, he would pay Rs.50,00,000/- (Rupees Fifty Lacs Only) or Rs.1,00,00,000/- (Rupees One Crore Only), at that time, he told Ashwinbhai that he would not like to do such, and thereafter, went from there with his younger brother. He has submitted that he has not signed anywhere on the compromise deed and had put a cross on the name of his younger brother and the said compromise was written by the Ashwinbhai after one and half months. He has further submitted that he had not filed any police complaint in relation to Rs 2,50,000/- (Rupees Two Lacs and Fifty Thousand) taken by Ashwinbhai.

6.7 Learned APP has further placed reliance on the statement of one Punit S/o. Narsibhai Udesa recorded by the Investigating Officer on 09.06.2016 and he has specifically stated there was a dispute going on between Karanbhai Solanki and Jetulbhai and one half prior, his uncle Karanbhai met Jitulbhai Kotecha at Europine Hotel for entering into compromise, at that time, Jetulbhai had made an offer of Rs.2,50,000/ (Rupees Two Lacs and Fifty Thousand) for compromise and on hearing that, his uncle Karan Solanki left the hotel. It is further stated that when he met his uncle Karanbhai outside the hotel, at that time, his uncle informed that he would not accept Rs.2,50,000/ (Rupees Two Lacs Fifty Thousand) for compromise with Jitulbhai.

6.8 In view of the aforesaid statement, learned APP has submitted that prima facie, case of extortion is made out against the present applicants and hence, FIR may not be quashed at this stage.” The above extract from the judgment of the High Court would make it abundantly clear that the Single Judge was duly apprised of the statements which were recorded by the Investigating Officer during the course of the investigation on 20 May 2016, 21 May 2016 and 9 June 2016. When the High Court took up the petitions under Section 482, the Investigating Officer upon the completion of the investigation, sought permission to submit the final report under Section 173 before the competent court. This was noted by the High Court in paragraph 9 of its impugned order which reads as follows:

“9.0 The impugned F.I.R being C.R. I-124 of 2016 is registered for the offences under section 465, 467, 468, 120B and 34 of the IPC against the present writ applicants. During the pendency of the writ applications a draft charge sheet is produced in which offences are altered to section 385, 389, 418, 423, 477, 506(2), 120B, 34 of IPC. Thus, this court has to examine whether the contents of the F.I.R reveal the offence of extortion and cheating against the present applicants.” In the above extract, the High Court noted that a “draft charge-sheet” was produced before it. The High Court nonetheless proceeded to formulate the issue before it as being whether the contents of the FIR revealed that offences of extortion and cheating had been committed by the respondents. But in its final order, the High Court quashed FIR I-124 of 2016 as well as “other consequential proceedings arising out of the same FIR” in relation to the accused under Section

482. However, the High Court concluded that an alleged offence of extortion punishable under Section 385 of the IPC had been made out on the face of the FIR against accused Karanbhai and Maganbhai (the fourth and fifth respondents) and the investigation was permitted to proceed against them for the offence of extortion. No offence as alleged in the FIR and draft charge-sheet was held to have been established against the other accused. 20 It is trite law that the High Court must exercise its inherent powers under Section 482 sparingly and with circumspection. In the decision in *Jugesh Sehgal v. Shamsher Singh Gogi*,¹⁷ this Court has held that, “[t]he inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice.” In *Simrikhia v. Dolley Mukherjee*,¹⁸ this Court in another context, while holding that the High Court cannot exercise its inherent powers to review its earlier decision in view of Section 362 of the CrPC, observed that

the inherent powers of the High Court cannot be invoked to sidestep statutory provisions. This Court held:

“5. ...Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory (2009) 14 SCC 683 (1990) 2 SCC 437 provisions and instead evolve a new provision in the garb of inherent jurisdiction.” (emphasis added) The police have a statutory right to investigate a cognizable offence under Sections 154 and 156 of the CrPC. Sub-Section 2 (i) of Section 173 of the CrPC provides that after the completion of investigation, the police officer in charge of the police station shall forward the final report to the Magistrate who is empowered to take cognizance of the offence alleged in the report. Before taking cognizance of the offence, the Magistrate has to apply their own mind and is not bound by the conclusions drawn by the police. In *Pratibha v. Rameshwari Devi* 19 a two-judge Bench of this Court has held that the High Court can neither direct an investigating agency to submit the investigation report before it nor can it quash a criminal proceeding under Section 482 relying on such a report when the report has not been submitted to the Magistrate. Justice Tarun Chatterjee held thus:

“18. In our view, the High Court has acted in excess of its jurisdiction by relying on the investigation report and the High Court was also wrong in directing the report to be submitted before it. It is now well settled that it is for the investigating agency to submit the report to the Magistrate...

From a bare reading of this provision [Section 173 (2) (i)], it cannot be disputed that after completion of the investigation, the officer in charge of the police station shall forward the report not to the High Court where the proceedings under Section 482 of the Code is pending but to a Magistrate empowered to take cognizance of the offence on such police report. Therefore, the High Court had acted beyond its power to direct the investigating agency to file the said report before it in the exercise of power under Section 482 of the Code.

.....

21. Therefore, in view of our discussions made (2007) 12 SCC 369 hereinabove, while exercising power under Section 482 of the Code, it is not open to the High Court to rely on the report of the investigating agency nor can it direct the report to be submitted before it as the law is very clear that the report of the investigating agency may be accepted by the Magistrate or the Magistrate may reject the same on consideration of the material on record. Such being the position, the report of the investigating agency cannot be relied on by the High Court while exercising powers

under Section 482 of the Code. Accordingly, we are of the view that the High Court has erred in quashing the FIR on consideration of the investigation report submitted before it even before the same could be submitted before the Magistrate.” In its interim order dated 2 May 2016, the High Court allowed the investigation to continue against the accused but directed that the final report cannot be submitted to the Magistrate without its permission. The direction was not supported by any reasoning whatsoever. Even at the interim stage, the High Court must demonstrate an application of mind and furnish reasons for issuing any interlocutory direction, which is capable of being tested before this Court in an appropriate case. The interim direction amounted to an unnecessary interference in the investigative process envisaged under the CrPC. The High Court transgressed the scope of the powers conferred upon it by restricting the police from submitting the charge-sheet before the Magistrate and by further perusing the contents of the “draft charge-sheet” in the proceedings before it.

21 We would like to clarify that a distinct position arises when the charge- sheet has been filed before a Magistrate and proceedings under Section 482 are pending before the High Court. In such cases, the High Court must take into consideration the material collected during the investigation, as has been held by a two-judge Bench of this Court in *Kaptan Singh v. The State of Uttar Pradesh* 20, of which one of us (Justice DY Chandrachud) was a part. However, the High Court cannot place reliance on a “draft charge-sheet” which is yet to be placed before the Magistrate to quash the criminal proceedings under Section

482. 22 Recently, in *Mahendra KC v. State of Karnataka* 21 this Court has reiterated the well settled test to be applied by the High Court for exercise of its powers under Section 482 for quashing an FIR:

“16...the test to be applied is whether the allegations in the complaint as they stand, without adding or detracting from the complaint, prima facie establish the ingredients of the offence alleged. At this stage, the High Court cannot test the veracity of the allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, on the basis of the evidence collected during the course of trial.”

23 In the present case, the FIR clearly mentions the role played by the sixth and seventh respondents in the following extract:

“...in spite of the possession of the aforesaid land being with us since year 1999, the daughters of Shamjibhai Jashabhai Koli i.e. Ramaben Koli, Savitaben Koli and Jayaben Koli all three of them had executed a power of attorney on 07/06/2011 in favour of one Karanbhai Parshotambhai Hathaliya on the stamp paper of Rs.100/- bearing No.20942, wherein they have stated that as they are the owners of the said land by way of their right they have all kind of authority to do all kinds of work pertaining to the said land besides, these people had also executed one Memorandum

of Understanding in favour of Kiranbhai Hathaliya, wherein it was decided to sell this land for an amount of Rs.2 Crores besides, towards the same an amount of Rs. 5, 51, 000/- (Rupees Five Lakhs and Fifty one Thousand Only) was paid in cash to the Party No.1 such facts were stated.

Besides, Savitaben and Ritaben had executed one another power of attorney and Memorandum of Understanding in favour of Ashwinbhai Parshottambhai Patel and in that Memorandum of Understanding also it Criminal Appeal No. 787 of 2021 Criminal Appeal No. 1238 of 2021 was stated that an amount of Rs.5,00,000/- (Rupees Five Lakhs Only) was paid by Ashwinbhai Patel through cheque to the executed, they have further stated that, if they are given shares in the aforesaid property then they will get 50% of the property in their share besides, it was also stated in the said deed that if the compromise is settled by way of giving cash then the said amount also fifty percent of the amount will be in their share etc

Thus, in this way I have purchased the above mentioned land from Shamjibhai Jashabhai Koli and the heirs of Shamjibhai Koli i.e. Ritaben alias Ramaben wife of Karanbhai Solanki and her husband Karanbhai Gordhanbhai Solanki, both residing at Ghanshyamnagar Kothariya road and Savitaben wife of Maganbhai Vaghela and her husband Maganbhai Devabhai Vaghela, both residing at HUDCO quarters, Near Janta Fatak, Jamnagar and other Kiran Parshottambhai Hathaliya, residing at 7, Patel Colony, Chandreshnagar Main Road, Rajkot and Ashwinbhai Parshottambhai Leela (Patel) Residing at Mota Mava Taluka District Rajkot and Jaimingiri Magangiri Goswami residing at A/ 5, Samrajya Apartment, New Collegewadi, Kalavad Road, Rajkot have by hatching illegal conspiracy as a part thereof in order to grab the above stated land of my ownership by making the same as disputed and sub-judice before the court intends to obtain huge amount of money or to obtain the said land for their economic benefit for which legally they do not have any right by implanting false, fabricated and forged documents and hence, this is my legal complaint against them as well as against those who emerges out of the investigation.” (emphasis added) The allegations in the FIR prima facie indicate that the sixth and seventh respondents entered into champertous agreements with the legal heirs of Shamjibhai and were alleged to be involved in the extortion of money from the appellant. In the impugned judgment, the High Court has held that the allegations on their face disclose that the fourth and fifth respondents committed the offence of extortion under Section 385 of the IPC and directed that the investigation be continued against them. However, the High Court completely failed to examine the allegation of criminal conspiracy qua the other accused where it has been alleged that they were also privy to such extortion. Thus, in such circumstances, when a specific role was attributed to the accused, the High Court could not have quashed the FIR under Section 482 of the CrPC.

24 During the course of its impugned judgment, the High Court noted that certain persons (the eighth and ninth respondents) who were named as accused in the draft charge-sheet had instituted quashing petitions, evidently before the draft charge-sheet was placed before the High Court. In this

backdrop, there is substance in the submission which has been urged on behalf of the appellant that the proceedings before the High Court have followed an unusual, if not extra- ordinary course. The High Court proceeded to entertain petitions for quashing under Section 482 at the behest of persons who were not named in the FIR purely on the basis of their names appearing in the draft charge-sheet. A draft charge-sheet was placed before the High Court by the investigating officer only in order to seek its permission, pursuant to the interim order, for submitting the charge-sheet to the competent court. Knowledge in regard to what has transpired during the course of the investigation is obtained by the accused once a copy of the charge-sheet is made available under Section 207 of the CrPC 22. Evidently, the persons whose names were mentioned in the draft charge-sheet had already moved the High Court in proceedings under Section 482 at a point of time “207. Supply to the accused of copy of police report and other documents. In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-

(i) the police report;

(ii) the first information report recorded under section 154;

(iii) the statements recorded under sub- section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub- section (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-

section (5) of section 173: Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused: Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.” anterior to the investigating officer submitting the charge-sheet to the High Court for seeking its permission to submit it before the competent court in accordance with law. As a matter of fact, the draft charge-sheet records the filing of the petitions for quashing in the High Court which would indicate that even before the charge-sheet was brought to the notice of the High Court, petitions for quashing had already been filed. The High Court ought to have taken note of these developments. The appellant has submitted both in the course of the oral and written submissions that these developments indicate that the accused were complicit with the police. The High Court should have been alive to the abuse of its process.

25 On behalf of the respondents, it has been submitted that during the course of the investigation, the sixth to ninth respondents, who were apprehending arrest, moved an application for anticipatory bail, which was allowed by the Sessions Judge, Rajkot. Hence, it has been urged that it was thereafter that the petitions for quashing came to be instituted. While the apprehension of arrest may have led to the filing of an application for anticipatory bail before the Sessions Judge, this could not furnish the basis of a petition for quashing under Section 482 at the behest of persons who were not named in the FIR and who, as stated earlier, had instituted proceedings for quashing even before the draft charge-sheet came to be submitted before the High Court. The judgment of the High Court indicates that while analyzing the case set up before it by the applicants in various quashing petitions, it has proceeded to quash the FIR and the draft charge-sheet in respect of applicants who were not even arraigned as accused in the FIR. The interference by the High Court in the investigation against the eighth and ninth respondents was at a premature stage and was not warranted.

26 During the course of oral arguments, it was urged on behalf of the respondents by learned counsel that a prior complaint had been registered against the appellant which had resulted into the submission of a charge-sheet. The respondents ought to have drawn the attention of this Court to the fact that on 8 July 2021, the High Court in Criminal Misc. Application No 10523 of 2021 had quashed the prior complaint as well as the charge-sheet and all consequential proceedings at the behest of the appellant, a fact which emerged out of the written submissions filed on behalf of the appellant. Another submission which was urged on behalf of the respondents is that the appellant had arrived at a compromise in respect of some of the accused and the entire FIR was quashed. On this aspect, the appellant in the written submissions has recorded that the memo of Criminal Misc. Application No 10529 of 2021 was filed by two persons (the fourth and fifth respondents) in respect of whom proceedings were directed to be continued. It is in this backdrop that the order dated 9 July 2021 records that the entire FIR stands quashed. The FIR against all the accused except the aforesaid two persons stood quashed as a result of the impugned order of the High Court dated 8 January 2019. Hence, the order dated 9 July 2021 only quashed the FIR against the remaining two accused with whom there was a subsequent compromise. The compromise has been annexed as Annexure R-1 to the counter affidavit filed by the sixth respondent. In this backdrop, the appellant stated that SLP (Crl) Nos 5734 and 5735 of 2019 are not being pressed. The respondents to the above SLPs are the legal heirs of the seller of the land from whom the appellant and his family members purchased the land and their spouses. The other accused are allegedly the persons who had executed champertous agreements or aided in their execution (eighth respondent) and who are alleged to have been party to the extortion of money from the appellant.

27 For the above reasons we have come to the conclusion that the High Court transgressed the limitations on the exercise of its jurisdiction under Section 482 of the CrPC in quashing the FIR and all consequential proceedings. There has been a clear abuse of the process before the High Court. We accordingly set aside the impugned judgment and order of the High Court dated 8 January 2019 and allow the Criminal Appeals arising out of SLP (Crl) Nos 5736-39 of 2019 in terms of the above judgment. However, Criminal Appeals arising out of SLP (Crl) Nos 5734 and 5735 of 2019 shall stand dismissed.

28 Pending application(s), if any stand disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]
.....J. [B V Nagarathna] New Delhi;

November 12, 2021.