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KAPTAN SINGH

v.

THE STATE OF UTTAR PRADESH AND OTHERS

(Criminal Appeal No. 787 of 2021)

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AUGUST 13, 2021

**[DR. DHANANJAYA Y. CHANDRACHUD AND
M. R. SHAH, JJ.]**

Code of Criminal Procedure, 1973:

- C s. 482 – *Inherent powers of High Court – Exercise of – On facts, criminal proceedings u/s. 147, 148, 149, 406, 329 and 386 IPC pending against the private respondents – High Court in exercise of powers u/s. 482 quashed the criminal proceedings – Sustainability of – Held: Not sustainable – High Court exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers u/s. 482 – High Court failed to consider the material collected during the investigation/inquiry and even the statements recorded by the Investigating officer – High Court failed to appreciate and consider the fact that there were very serious triable issues/allegations which were required to be gone into and considered at the time of trial –*
- E *High Court lost sight of crucial aspects which emerged during the course of the investigation – High Court grossly erred in entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial – Also, the High Court erred in observing that original complainant has no locus – Order passed by the High Court quashing the criminal proceedings in exercise of powers u/s. 482 is quashed and set aside.*
- F *482 – Power under – Scope and limit of – Discussed.*

Allowing the appeal, the Court

- G **HELD: 1.1 The High Court exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C. [Para 9.3][419-D-E]**

- 1.2 The High Court in exercise of powers under Section 482 Cr.P.C. quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC. When**

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the High Court in exercise of powers under Section 482 Cr.P.C. A
quashed the criminal proceedings, by the time the Investigating
Officer after recording the statement of the witnesses, statement
of the complainant and collecting the evidence from the incident
place and after taking statement of the independent witnesses
and even statement of the accused persons, filed the
charge-sheet before the Magistrate for the offences under
Sections 147, 148, 149, 406, 329 and 386 IPC and even the
Magistrate also took the cognizance. From the impugned
judgment and order passed by the High Court, it does not appear
that the High Court took into consideration the material collected
during the investigation/inquiry and even the statements
recorded. If the petition under Section 482 Cr.P.C. was at the
stage of FIR in that case the allegations in the FIR/Complaint
only are required to be considered and whether a cognizable
offence is disclosed or not is required to be considered. However,
thereafter when the statements are recorded, evidence is
collected and the charge-sheet is filed after conclusion of the
investigation/inquiry the matter stands on different footing and
the Court is required to consider the material/evidence collected
during the investigation. Even at this stage also, the High Court
is not required to go into the merits of the allegations and/or
enter into the merits of the case as if the High Court is exercising
the appellate jurisdiction and/or conducting the trial. [Para
9.1][418-A-F] B C D E

1.3 The High Court failed to appreciate and consider the
fact that there were very serious triable issues/allegations which
were required to be gone into and considered at the time of trial.
The High Court lost sight of crucial aspects which emerged during
the course of the investigation. The High Court failed to
appreciate and consider the fact that the document-joint notarized
affidavit of Accused No. 2 and MD under which according to
Accused no.2, Rs. 25 lakhs was paid and the possession was
transferred to her itself is seriously disputed. Whether Rs. 25
lakhs has been paid or not the accused have to establish during
the trial, because the accused are relying upon the said document
and payment of Rs. 25 lakhs as mentioned in the joint notarized
affidavit. It is also required to be considered that the first
agreement to sell in which Rs. 25 lakhs is stated to be sale F G H

- A consideration and there is reference to the payment of Rs.10 lakhs by cheques. It is a registered document. [Para 10][419-E-H; 420-A-B]

- 1.4 As regards the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC, it is to be noted that the High Court itself noted that the joint notarized affidavit is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. The High Court committed an error. Even the High Court failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarized affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs. 25 lakhs as mentioned in the joint notarized affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs. 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the said aspect is to be considered during trial. It is also required to be noted that the first suit was filed by MD and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. All the said aspects are required to be considered at the time of trial only. Therefore, the High Court grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. [Para 11][420-B-G]

- 1.5 The High Court erred in observing that original complainant has no locus. The said observation is made on the premise that the complainant has not placed on record the power of attorney along with the counter filed before the High Court. However, when it is specifically stated in the FIR that MD has executed the power of attorney and thereafter the Investigating Officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent
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witnesses, thereafter whether the complainant is having the power A
of attorney or not is to be considered during trial. [Para 12][420-
G-H; 421-A-B]

1.6 The impugned judgment and order passed by the High B
Court quashing the criminal proceedings in exercise of powers
under Section 482 Cr.P.C. is unsustainable and is accordingly
quashed and set aside. The trial is to be conducted and proceeded
further in accordance with law and on its own merits. [Para
13][421-B-C]

Dineshbhai Chandubhai Patel v. State of Gujarat, C
(2018) 3 SCC 104 : [2018] 1 SCR 62; Dhruvaram
Murlidhar Sonar v. State of Maharashtra, (2019) 18
SCC 191 : [2018] SCR 920; CBI v. Arvind Khanna,
(2019) 10 SCC 686 : [2019] 13 SCR 470; Telangana
v. Managipet, (2019) 19 SCC 87; XYZ v. State of
Gujarat, (2019) 10 SCC 337; State of Haryana v.
Bhajan Lal, (1992) Supp 1 SCC 335 : [1990] 3 Suppl.
SCR 259 – relied on. D

Case Law Reference

[2018] 1 SCR 62	relied on	Para 9.1	
[2018] SCR 920	relied on	Para 9.2	E
[2019] 13 SCR 470	relied on	Para 9.2	
(2019) 19 SCC 87	relied on	Para 9.2	
(2019) 10 SCC 337	relied on	Para 9.2	
[1990] 3 Suppl. SCR 259	relied on	Para 9.2	F

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 787 of 2021.

From the Judgment and Order dated 29.07.2020 of the High Court of Judicature at Allahabad in Crl Misc Application No.1697 of 2016. G

Santosh Kumar Pandey, Adv. for the Appellant.

Devdatt Kamat, Sr. Adv., Ankit Goel, Amit Kumar Singh, Avnish Pandey, Ms. Yugandhara Pawar Jha, Ashwin Nair, Kunal Verma, Advs. for the Respondents.

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- A The Judgment of the Court was delivered by
M. R. SHAH, J.
1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 29.07.2020 passed by the High Court of Judicature at Allahabad in Application under Section 482 No. 1697 of 2016, by which
- B the High Court in exercise of powers under Section 482 Cr.P.C. has quashed the entire proceedings of Criminal Case No. 3302 of 2015 under Sections 147, 148, 149, 406, 329 and 386 IPC, P.S. Barra, District Kanpur Nagar, pending in the Court of I-Additional Chief Metropolitan Magistrate, Kanpur Nagar, the original complainant has preferred the present appeal.
- C 2. That the appellant herein filed a complaint before the learned Magisterial Court under Section 156(3) Cr.P.C. against the private respondents for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC; that the learned Additional Chief Metropolitan Magistrate, Kanpur Nagar, by order dated 07.09.2015, after perusal of the facts
- D mentioned in the application/complaint and documents and having found a *prima facie* case of cognizable offence and having observed that the police is required to investigate the same, allowed the said application under Section 156(3) Cr.P.C. and directed the concerned Station House Officer to register the first information report and investigate it in accordance with law.
- E 2.1 That thereafter the concerned SHO registered the FIR as Case Crime No. 0645 of 2015 against the private respondents herein for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. As per the allegations in the FIR, one Munni Devi was the owner of Plot No. 1342, W Block 2 Yojna Juhi Kala, Damodar Nagar, admeasuring 387
- F sq.ft.; that she appointed the complainant – Kaptan Singh as her power of attorney holder to take care of the said plot; that Munni Devi wanted to sell the said plot; that she entered into a registered agreement to sell with one Mamta Gupta – respondent no. 3 herein on 27.10.2010 for a total sale consideration of Rs.25,00,000/-; that at the time of agreement,
- G the purchaser – Mamta Gupta handed over five cheques of Rs. 2 lakh each, drawn on ICICI Bank, Branch Govind Nagar, Kanpur; that Munni Devi presented one of the cheques no. 502314 dated 15.11.2010 in her bank and the said cheque was dishonoured “due to insufficient funds”; that when the cheque returned unpaid, Munni Devi contacted Mamta Gupta and then she informed her that her husband is suffering from
- H kidney failure and facing financial problem and therefore she would not

be able to purchase the said plot, however she is arranging money; that thereafter Mamta Gupta showed no interest for registration of sale deed and she informed Munni Devi not to present the cheques; that thereafter Munni Devi served a legal notice dated 02.01.2015 and 18.05.2015 through registered post; that after receiving notice dated 18.05.2015, Mamta Gupta showed no positive response, then Munni Devi appointed the complainant as a power of attorney holder on 05.08.2015.

2.2 It was alleged that thereafter when the complainant along with his friend Ram Pratap Singh went to the plot on 20.08.2015, at that time Mamta Gupta and her husband were present there along with three other persons outside the tin shed. The complainant told them that they have not paid the full consideration amount and had forcibly put lock on the room and requested them to open the said lock. At that time, Mamta Gupta and her husband told them that they had paid Rs. 2 lakhs and they will not open the lock till the time they will get Rs. 10 lakhs. It was alleged that all the persons abused the complainant by using filthy language relating to his mother and sister and pushed the complainant due to which he fell down and thereafter he was beaten with fist and Mamta Gupta, who was carrying knife like weapon, kept the edged part of it on his chest and gave a blank paper and threatened him to sign it, if not, then he will be killed and the complainant signed it. The complainant also produced the medical report. That thereafter after the completion of the investigation and after recording of the statement of the witnesses, statement of the complainant and after collecting the evidence from the place of incident and taking statement of independent witnesses and even the statement of the accused persons, after due enquiry and having satisfied that a *prima facie* case is made out against the accused for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC, the investigating officer filed chargesheet no. 320/2015 dated 26.11.2015 against the private respondents herein for the aforesaid offences.

2.3 That thereafter the private respondents herein approached the High Court for quashing criminal proceedings under Section 482 Cr.P.C. It was the case on behalf of all the accused – private respondents herein in the 482 petition that dispute is of a civil nature; that Munni Devi entered into a registered agreement to sell on 27.10.2010 with Mamta Gupta as vendee; that Munni Devi undertook to get the land free hold done on the aforesaid plot and thereafter to execute the sale deed in favour of Mamta Gupta; that part payment was made immediately by

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- A cheque and cash both and the remaining amount of Rs. 10 lakhs were to be paid at the time of execution of the sale deed; that on the same date a joint notarized affidavit of Mamta Gupta and Munni Devi was also executed demonstrating the payment of Rs. 25 lakhs by Mamta Gupta and the transfer of possession to Mamta Gupta; that after obtaining possession Mamta Gupta constructed a two-room set on the said plot.
- B It was also the case on behalf of the accused that thereafter Munni Devi did not get the free hold executed and since the husband of Mamta Gupta was suffering from a renal failure and was undergoing dialysis, she could not initiate legal proceedings for specific performance; that thereafter Munni Devi filed a suit in the Court of Civil Judge (Senior Division), Kanpur Nagar. It was also the case on behalf of the private respondents – accused that as Munni Devi did not get any relief from the court below, she got in touch with a land mafia – the original complainant – the appellant herein and he was the power of attorney holder of Munni Devi and that when he visited the plot on 20.08.2015 he was thrown out and was assaulted. That thereafter Mamta Gupta filed a suit for permanent injunction being O.S. No. 2077 of 2015 in the Court of Civil Judge (Senior Division), Kanpur Nagar wherein temporary injunction had been granted in favour of Mamta Gupta and the said order is still in operation. Therefore, it was submitted that the dispute is purely of a civil nature and criminal proceedings have been lodged only
- C with a view to pressurize Mamta Gupta to handover the plot to the complainant even though Mamta Gupta has paid a sum of Rs.25 lakhs to the owner of the plot in question. Therefore, it was prayed to quash the entire FIR.
- 3. That the 482 petition was opposed by the original complainant.
- F A detailed affidavit/counter affidavit was filed on behalf of the original complainant. It was specifically the case on behalf of the complainant that the documents alleged to have been executed by Munni Devi in favour of Mamta Gupta on 27.10.2010/subsequent notarized document dated 27.10.2010 are fabricated in which it is stated that Rs. 25 lakhs have been paid and that the possession has been handed over to Mamta Gupta. It was also pointed out that for the aforesaid another first information report has been registered against them on 04.12.2015, registered as Case Crime No. 816 of 2015 under Sections 420, 467, 468, 471 IPC at Police Station Bara, District Kanpur Nagar and the investigation is still going on. It was also submitted that the electricity connection was obtained by Mamta Gupta in a fraudulent manner and

subsequently the said electricity connection has been permanently disconnected by Electricity Department, Kanpur Nagar on 18.08.2015 and no electric connection exists in the premises in question till today. It was also submitted that after the completion of the investigation and after collecting the credible evidence against the accused, the investigating officer has submitted a chargesheet and the learned Magistrate after applying its mind judiciously has taken cognizance against the accused. Therefore, it was prayed to dismiss 482 application.

4. By the impugned judgment and order, the High Court has allowed the said application and has quashed the entire criminal proceedings mainly on the grounds that the original complainant – Kaptan Singh for all practical purposes is ranked outsider and stranger to the deal and therefore the criminal proceedings initiated at his behest cannot continue; that no power of attorney executed by Munni Devi in his favour has been filed with the counter affidavit and on the ground that the dispute is of a civil nature and civil suits are pending between the parties and veracity and genuineness of the notarized affidavit signed by Munni Devi and Mamta Gupta can be considered in the civil proceedings and there was no entrustment of property and therefore no case is made out for the offence under Section 406 of the IPC. That having observed that there is no case against the accused under Section 406 IPC, the High Court has further observed that rest of the allegations are tangent to the main allegation without any corroborating evidence.

5. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, quashing the entire criminal proceedings in exercise of its inherent powers under Section 482 Cr.P.C., the original complainant has preferred the present appeal.

6. Shri Santosh Kumar Pandey, learned Counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case the High Court has committed a grave error in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C. It is further submitted that the High Court ought to have appreciated and considered the fact that after the FIR was lodged, the same came to be investigated by the Investigating Officer and after thorough investigation and recording the statement of the witnesses and after collecting the evidence and even after recording the statements of the independent witnesses and statement of the accused persons and after holding inquiry the Investigating Officer filed the charge-sheet

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- A against the accused persons and even thereafter the Learned Magistrate also took the cognizance. It is submitted that the aforesaid aspect has not been considered at all by the High Court while quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C.
 - 6.1 It is further submitted that the High Court has failed to appreciate and consider that there are contentious issues which can be considered only at the time of trial.
 - 6.2 It is further submitted that the High Court has entered into the merits of the allegations at the stage of quashing proceedings under Section 482 Cr.P.C. It is submitted that as held by this Court in catena of decisions while exercising the powers under Section 482 Cr.P.C., the High Court is not required to enter into and/or consider the merits of the allegations in detail, which as such are required to be considered at the time of trial. Heavy reliance is placed on the decisions of this Court in *Dineshbhai Chandubhai Patel vs. State of Gujarat*, (2018) 3 SCC 104; *Dhruvaram Murlidhar Sonar vs. State of Maharashtra*, (2019) 18 SCC 191; *CBI vs. Arvind Khanna*, (2019) 10 SCC 686; *Telangana vs. Managipet*, (2019) 19 SCC 87; *XYZ vs. State of Gujarat*, (2019) 10 SCC 337.
 - 6.3 It is submitted that as held by this Court in the case of *XYZ (Supra)* when there are serious triable allegations in complaint it is improper to quash the FIR in exercise of inherent powers of High Court under Section 482 Cr.P.C.
 - 6.4 It is further submitted that the High Court has failed to appreciate and consider that the civil proceedings were initiated initially by Munni Devi and thereafter the accused no. 2 filed the suit only for permanent injunction and no suit for specific performance has been filed. It is submitted that as such there are very serious allegations of forgery of the joint notarized document dated 27.10.2010 by which the accused have alleged to have given Rs. 25 lakhs to Munni Devi. It is submitted that the High Court has failed to appreciate and consider the fact that in the present case there are two documents of the very date i.e. 27.10.2010, one is registered one in which the sale consideration is stated to be Rs. 25 lakhs and in another document of same date dated 27.10.2010, the sale consideration is stated to be Rs. 35 lakhs and it is stated that Rs. 25 lakhs have been paid to Munni Devi. It is submitted that the payment of Rs. 25 lakhs and even the existence of joint notarized agreement dated
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27.10.2010 is to be considered at the time of trial. It is submitted that A
therefore, when there are serious triable issues, the High Court is not
justified in quashing the criminal proceedings.

7. Shri Ankit Goel, learned Counsel appearing on behalf of State B
of Uttar Pradesh has supported the appellant - original complainant.

8. Shri Amit Kumar Singh, learned Counsel appearing on behalf C
of the private respondents while opposing the present appeal has
vehemently submitted that in the facts and circumstances of the case
the High Court has not committed any error in quashing the criminal
proceedings.

8.1 It is submitted that as rightly observed by the High Court, the D
case squarely falls within the exceptions as observed and held by this
Court in the case of **State of Haryana vs. Bhajan Lal**, 1992 Supp (1)
SCC 335.

8.2 It is submitted that in the present case there was no entrustment E
of any property and therefore, there is no question of any offence being
committed under Section 406 IPC. It is submitted that therefore when
the ingredients for the offence under Section 406 IPC are not satisfied
and as rightly observed by the High Court the genuineness of the
documents dated 27.10.2010 are to be considered in the civil proceedings
and which are not required to be considered in the criminal proceedings,
the High Court is absolutely justified in quashing the criminal proceedings.
It is submitted that as such the civil dispute is tried to be converted into
criminal dispute which can be said to be nothing but an abuse of process
of law.

8.3 It is further submitted by learned Counsel appearing on behalf F
of private respondents that even in the present case medical certificate
which is now produced before this Court, was not produced before the
High Court. It is submitted therefore in absence of any medical report
produced before the High Court and even otherwise the injuries mentioned
in the medical report are simple in nature, no case is made out for the
other offences and therefore the High Court has rightly quashed the
criminal proceedings.

8.4 It is further submitted that as observed by the High Court G
even the original complainant has no locus to file the complaint as no
power of attorney alleged to have been executed by Munni Devi was
placed on record.

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- A 8.5 Making the above submissions, it is prayed to dismiss the appeal.
9. Heard learned Counsel for the respective parties at length.
- 9.1 At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 Cr.P.C. has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C. quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the Learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 Cr.P.C. was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matterstands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of *Dineshbhai Chandubhai Patel* (*Supra*) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and *prima facie* material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation,
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it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material. A

9.2 In the case of ***Dhruvaram Murlidhar Sonar*** (*Supra*) after considering the decisions of this Court in ***Bhajan Lal*** (*Supra*), it is held by this Court that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C. Similar view has been expressed by this Court in the case of ***Arvind Khanna*** (*Supra*), ***Managipet*** (*Supra*) and in the case of ***XYZ*** (*Supra*), referred to hereinabove. B C

9.3 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C. D

10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarized affidavit of Mamta Gupta – Accused No.2 and Munni Devi under which according to Accused no.2 - Ms. Mamta Gupta, Rs. 25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27.10.2010, the sale consideration is stated to be Rs. 25 lakhs and with no reference to payment of Rs. 25 lakhs to Ms. Munni Devi and no reference to handing over the possession. However, in the joint notarized affidavit of the same date i.e., 27.10.2010 sale consideration is stated to be Rs. 35 lakhs out of which Rs. 25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused No.2. Whether Rs. 25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs. 25 E F G H

- A lakhs as mentioned in the joint notarized affidavit dated 27.10.2010. It is also required to be considered that the first agreement to sell in which Rs. 25 lakhs is stated to be sale consideration and there is reference to the payment of Rs.10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/ or consider the material collected during the investigation.
- 11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarized affidavit dated 27.10.2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarized affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs. 25 lakhs as mentioned in the joint notarized affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs. 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C.

- 12. Even the High Court has erred in observing that original complaint has no locus. The aforesaid observation is made on the premise that the complainant has not placed on record the power of attorney along with the counter filed before the High Court. However, when it is

specifically stated in the FIR that Munni Devi has executed the power of attorney and thereafter the Investigating Officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent witnesses, thereafter whether the complainant is having the power of attorney or not is to be considered during trial.

13. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C. is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now, the trial to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 Cr.P.C. only and the trial Court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove. The present appeal is accordingly allowed.

Nidhi Jain

Appeal allowed.