Gujarat High Court
Avadhoot Vishwanath Sumant vs State Of Gujarat on 27 October, 2021
Bench: Gita Gopi

R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 2424 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ? --

2 To be referred to the Reporter or not ? --

3 Whether their Lordships wish to see the fair copy of the judgment ? --

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? --

==========

AVADHOOT VISHWANATH SUMANT
Versus
STATE OF GUJARAT & 1 other(s)

==========

Appearance:
MR. YOGESH LAKHANI, SR. ADVOCATE WITH MR P P MAJMUDAR(5284) for the Applicant(s) No. 1
MR. VIMAL PATEL, ADVOCATE WITH MR DEVARSHI C SHAH(5545) for the Respondent(s) No. 2
MS. MONALI BHATT, APP (2) for the Respondent(s) No. 1

==========

CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 27/10/2021

ORAL JUDGMENT

1. Rule. Ms. Monali Bhatt, learned APP and Mr. Devarshi Shah, learned advocate waive service of notice of rule on behalf of respondent Nos.1 and 2 respectively.

R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021

2. The present petition is filed for quashing of FIR being C.R. No. I-106 of 2016 dated 8.4.2016 registered with Raopura Police Station, Vadodara City, for the offence punishable under Sections 406, 420, 465, 467, 468, 471 and 114 of the Indian Penal Code.

3. The petitioner states that he is a reputed practising lawyer at Vadodara, in Civil and Corporate sides since last more than 25 years and has an unblemished record as a lawyer and is a reputed and respected lawyer in Vadodara Bar. The petitioner is also a visiting faculty at Institute of Chartered Accountant of India (ICAI) as well as in M.S. University of Vadodara and National Academy of Indian Railways. The petitioner was also nominated as Director by SEBI in Vadodara Stock Service Limited.

3.1 It is submitted that one Special Civil Suit No. 533/2011 was instituted on 27.6.2011 by Achyut Hiralal Shah against respondent No.2 the complainant, and Princes Ujwalla Raje , challenging sale deed dated 19.3.2012 for land situated at Revenue Survey No. 83/p/3/1, admeasuring 3000 sq. mtrs. executed by Ujwalla Raje in favour of respondent No.2.

3.2 It is submitted that on 30.6.2011, summons was issued in the suit to the defendants therein and the said summons was served on respondent No.2, who had accepted the same through his son.

3.3 It is submitted that the present petitioner was instructed to appear in the said matter on behalf of respondent No.2 herein R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 and based on such instructions, on 7.7.2011, the petitioner gave a pursis to the Court declaring of having instructions to appear on behalf of respondent No.2 therefore adjournment was sought for. On 12.7.2011, the petitioner wrote an email to Ronak Patel, son of respondent No.2, attaching the Vakalatnama of the petitioner and pursuant to the same, respondent No.2 sent a duly signed Vakalatnama to the petitioner and on the basis of the aforesaid authority/ Vakalatnama, petitioner filed his appearance in the suit.

3.4 On 19.11.2011, the petitioner filed a duly affirmed application of the respondent No.2, under the provisions of Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 for rejection of plaint of Special Civil Suit No. 533/2011. It is submitted that the said application is on affidavit of respondent No.2 which petitioner submitted as his lawyer. The petitioner also gave an application Exh.34 on the same date on 19.11.2011 requesting the Court to hear the matter on priority basis and it is stated that the said application was also duly affirmed and verified by respondent No.2. The petitioner contends that the Suit stood pending at the stage of hearing of injunction application Exh-5 as well as application under Order 7 Rule 11. It is submitted that in the said Suit, the original defendant No.1 by filing a pursis dated 21.1.2012, adopted the contents of Order 7 Rule 11 application.

3.5 The petitioner urges that the application under Order 7 Rule 11 and Section 151 were duly affirmed by respondent No.2 R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 and the said fact is also substantiated from the extract of the Notary Register maintained by Notary Shri Yogesh Joshi.

3.6 The petitioner submits that the respondent No.2 had engaged him as his advocate in various other proceedings being Regular Civil Suit No. 99/2011, Special Civil Suit No. 525/2009, 280/2008, Rent Suit No. 102/2012 as well as in one revenue proceedings being CTS/RA No. 103/2013.

3.7 Petitioner avers that there are two sets of people who are claiming the ownership of the said land. The first set of persons is claiming their title through Mrs. Ujjwalaraje Gaekwad, who had acquired the title and ownership of the said land by virtue of succession to her father, and, after becoming the owner of the said land had proposed to enter into a transaction for the sale of the said land in favour of Mukesh Bhimraj Gupta, however, because the said land was an agricultural land at the relevant time as Mukesh Bhimraj Gupta was not an agriculturist in view of the bar contained in the Bombay Tenancy and Agricultural Lands Act, the sale deed could not be executed in his favour and therefore Mukesh Bhimraj Gupta had entered into an arrangement with respondent No.2-Chandrakant Laxmidas Patel, the complainant, whereby it was agreed that the land shall be acquired in the name of respondent No.2, however further agreed that Mukesh Bhimraj Gupta and respondent No.2 shall hold the ownership jointly in the ratio of 70:30. Therefore, accordingly the sale deed dated 18.3.2010 bearing registration No. 3492 was executed by Mrs. Ujjwalaraje Gekwad in favour of R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 respondent No.2. Thereafter, respondent No.2 and Mukesh Bhimraj Gupta sold the said land to Bhogilal Odhavji Industrial Estate Private Limited with its Director Mr. Vinod B. Amlani on 13.5.2011 vide registration No. 5239. The petitioner submits that when this sale from respondent No.2 and Mukesh Bhimraj Gupta to Mr. Vinod B. Amlani was caused, he carried out the title clearance process and issued title clearance certificate.

3.8 Petitioner's further averment is that the second set claiming the ownership are the heirs of late Achyut Hiralal Shah who say that a Will was executed in favour of late Achyut Hiralal Shah by one Kamaladevi on 9.12.1991 and therefore by virtue of the Succession Certificate obtained by late Achyut Hiralal Shah in Probate case 74 of 2000, late Achyut Hiralal Shah holds ownership of the said land. The order granting succession certificate was stayed by the Civil Court in the revocation proceedings which were filed by Mrs. Ujjwalaraje Gaekwad. It is submitted that in June 2011, even after respondent No.2 and Mukesh Bhimraj Gupta transferred the said land in favour of Mr. Vinod B. Amlani in May, 2011 by virtue of registered sale deed, late Achyut Hiralal Shah instituted Special Civil Suit No. 533 of 2011 only against Mrs. Ujjwalaraje Gaekwad and respondent No.2, seeking cancellation of sale deed executed by Mrs. Ujjwalaraje Gaekwad in favour of respondent No.2.

3.9 It is stated and submitted that on 21.2.2014, respondent No.2 gave a Police complaint against Mukesh Bhimraj Gupta alleging that he has failed to honour his liability to pay Income Tax with regard to the aforesaid transaction of sale deed dated R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 13.5.2011 however the said complaint was withdrawn by respondent No.2 by giving his statement to the police. The respondent No.2 had also instituted Special Civil Suit No. 615/2014 on 27.4.2014 against Mukesh Bhimraj Gupta, Mrs. Ujjwalaraje Gaekwad and Bhogilal Odhavji Industrial Estate Private Limited, inter alia, praying for cancellation of sale deed dated 13.5.2011, wherein petitioner states that he has filed appearance on behalf of Mr. Mukesh Bhimraj Gupta.

3.10 The petitioner contends that on 17.12.2014 the petitioner intimated respondent No.2, through his son, that the petitioner would be retiring as his Advocate from all the pending six matters. The petitioner states that he was compelled to give such a letter because respondent No.2 was thereafter having certain issues with the petitioner, and therefore, the petitioner decided to discontinue himself as Lawyer of respondent No.2, and therefore, the letter dated 17.12. 2014 . For the matters for which the petitioner had appeared for respondent No.2, the respondent No.2 had paid fees to the petitioner, which were duly reflected in the account of the petitioner. The petitioner had also given voucher on 20.5.2014 of cash receipt as fees from respondent No.2. The petitioner submits that he has returned the fees of Rs. 1,00,000/- since the petitioner was withdrawing as Lawyer of respondent No.2.

3.11 Thus, the petitioner submits that the series of facts clearly indicate that the petitioner was engaged as lawyer of respondent No.2 and the said fact was well within the knowledge of R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 respondent No.2. Respondent No.2 in fact had paid fees to the petitioner for the same and had given Vakalatnama to the petitioner for appearing in Special Civil Suit No. 523/2011. It is submitted that on 1.1.2015, the associates of the petitioner, who had jointly appeared with the petitioner in the Suits of respondent No.2, communicated to respondent No.2 by way of a letter that they too shall discontinue as lawyers in his Suits.

3.12. On 14.2.2015, the respondent No.2 gave a complaint to Police Inspector, Raopura Police Station, Vadodara as well as Police Commissioner, Vadodara City stating that in Special Civil Suit No. 533/2011 he has not engaged the petitioner as his lawyer and, therefore, he alleged that offences under Sections 45, 467, 420, etc. of the IPC have been committed by the present petitioner.

3.13 After the complaint, on 23.3.2015, the petitioner sent a letter to respondent No.2 by Registered Post A.D. stating that he has given back all the papers, including of Special Civil Suit No. 533/2011 and, therefore, petitioner instructed respondent No.2 to make appropriate arrangement for engaging another lawyer, thus on 9.4.2015, the petitioner submitted an application, to the Court in Special Civil Suit No. 533/2011, withdrawing his appearance, and it is stated that the concerned Court has noted the said fact.

3.14 Petitioner submits that pursuant to the complaint of respondent No.2, the Police started preliminary investigation and R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 recorded statement of the present petitioner and Mr. Vinod B. Amlani, Mr. Mukesh Bhimraj Gupta and Mr. Yogesh Joshi, Notary. Thereafter, the Police Inspector on 4.6.2015 submitted a report resolving that no offence is made out on the allegations made by the respondent No.2, in his complaint.

3.15 Petitioner submits that after delay of about eight months, respondent No.2 filed Special Criminal Application No. 1710/2016 before this Hon'ble Court seeking a direction to register his complaint as an F.I.R., and contends that in the said petition, the respondent No.2 has suppressed the fact of closure report filed by Police on 4.6.2015. While this Court on 21.3.2016 directed the concerned Police Inspector to take appropriate action, considering the judgment of Hon'ble Supreme Court of India in the case of Lalitakumari v. Government of Uttar Pradesh.

3.16 It is submitted that on the basis of the aforesaid order of this Hon'ble Court, the police registered F.I.R. being C.R. No. I-106 of 2016 dated 8.4.2016 registered with Raopura Police Station, Vadodara. FIR mentioned that respondent No.2 has submitted that as per direction of this Hon'ble Court in Special Criminal Application No. 1710/2016, F.I.R is required to be registered. Thus, the petitioner contends that the respondent No.2 has abused the process of criminal machinery as there was no specific direction of this Hon'ble Court in the said Special Criminal Application No.1710/2016 to register FIR.

3.17 Petitioner therefore contents that on bare reading of the R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 impugned F.I.R. , none of the alleged offences are made out and the impugned F.I.R. is a sheer abuse of process of law, thus the petitioner has preferred the present petition, for quashing the same.

4. Mr. Yogesh Lakhani, learned Senior Advocate in support with learned advocate Mr. P.P. Majmudar submitted that pursuant to the complaint of the respondent No.2 dated 4.2.2015, the Police authority under complete preliminary inquiry, submitted a report. The Police found nothing to constitute any alleged offence. Mr. Lakhani submitted that this being material and vital fact, was suppressed by the petitioner before this Court while pursuing the petition being Special Criminal Application (Direction to lodge FIR/ Complaint) No. 1710 of 2016. Mr. Lakhani submitted that on 21.3.2016, the Hon'ble Court had directed to go in accordance with Lalita Kumari's case and there was no such direction for lodging the FIR. Mr. Lakhani, thus, states that non-disclosure of the earlier complaint dated 4.2.2015, before the Raopura Police Station, Vadodara City and the report of the Police stating that there is no offence in the matter, speaks of the illegality and malafide on the part of the complainant. He states that the order of this Court has been misused to perpetuate serious illegality.

4.1 Mr. Lakhani, learned Senior Advocate stated that the appearance by way of Vakalatnama was under the instruction of respondent No.2 and his son. Summons of the Civil Suit No. 533 of 2011 was received by the son of the respondent No.2 at the residential address of respondent No.2. The Vakalatnama was R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 handed over in the office of the petitioner which came to be filed in the Suit and, thereafter, application under Order 7 Rule 11 of CPC was placed at Exh-33 and at the same time an application under Section 151 of CPC by way of Exh-34 was moved in the said Suit, which was drafted and prepared by the petitioner and handed over for the signature of the respondent No.2, which was duly Notarised with the respondent No.2's signature and the same was handed over to the petitioner and thereafter it was presented before the Court on 19.11.2012. Mr. Lakhani submitted that thereafter practically nothing happened in the Suit, rather the defendant No.1 adopted the application under Order 7 Rule 11 CPC on 21.2.2012, which confirms the propriety and legal strength of the application presented for respondent No.2. Mr. Lakhani stated that after the application was moved in the Court, the petitioner continued to appear and attend the Civil Suit No. 533 of 2011 and till his appearance and attendance, nothing adverse happened in the Suit on any count.

4.2 Mr. Lakhani, learned Senior Advocate states that the privity between the petitioner and respondent No.2 ended on 17.12.2014 as and when the petitioner addressed communication to

Ronak Chandrakant Patel, son of the complainant with a request to receive and acknowledge the cheque of Rs.1 Lakh and file containing all the papers in respect of litigation, six original letters were issued to the complainant with a request made to obtain his signature and to return the original letters to the petitioner.

R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 4.3 Mr. Lakhani submitted that another letter dated 23.3.2015 was written by the petitioner to which there was no reply from the respondent No.2. Mr. Lakhani submitted that during that course, the respondent retained another advocate Ms. Parul Parikh who filed her appearance on 7.5.2015 and thus submitted that during the period of appearance of the petitioner on behalf of respondent No.2 in the Civil Suit No. 533 of 2011 till 7.5.2015, nothing adverse happened in the Suit and no orders were passed by the Court, to be considered adversely affecting the rights of the respondent No.2. Mr. Lakhani submitted that attempt of the petitioner of moving an application under Order 7 Rule 11 and further application under Section 151 of CPC for early hearing, was for the interest of respondent No.2 and for the effective protection of the respondent Nos.2's right and interest in the Suit.

4.3 Mr. Lakhani further stated that when the respondent No.2 signed exhibit Application Exh-33 and 34, the name of the petitioner herein was shown as advocate of respondent No.2 and, therefore, Mr. Lakhani states that when the respondent No.2 signed and got the application Notarised, it was very well within his knowledge that the petitioner was appearing for him and thus the conduct of the respondent No.2 would clarify that the impugned FIR is nothing but a counterblast and made with an ulterior motive. Mr. Lakhani further submitted that after the new advocate Ms. Parul Parikh was retained on 7.5.2015, neither respondent No.2 nor the new advocate bothered to appear before the Court for argument on application under Order 7 Rule 11 and continued to remain absent. Thereafter, Notice came to R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 be duly served on 31.5.2016, upon the respondent No.2 even then respondent No.2 continued to remain absence in Civil Suit No. 533 of 2011 and the Hon'ble Civil Court was pleased to close the stage of argument of respondent No.2 owing to his continuous absence. Mr. Lakhani submitted that the allegation of alleged damage in the Suit is wholly fabricated and contradictory statement where the very inaction of the respondent No.2 and avoidance to attend the proceedings had led to the consequences of his suffering and thus any wrong or loss as alleged is because of respondent No.2's own inaction after 7.5.2015. There is no damage to the legal rights of the respondent No.2 because of the petitioner, rather application under Order 7 Rule 11 protected the interest of the respondent No.2. Mr. Lakhani stated that the respondent No.2 has not suffered anything on account of the petitioner and in fact the bald allegations of alleged damage to his legal rights, apparently are proved to be false and requires to be dismissed as they are blatantly foul and fraudulent in every respect. It is contended by Mr. Lakhani that original application dated 14.2.2015 before the Police, with the comparision of the impugned FIR, would reflect that FIR is total abuse of process of law by resorting to falsehood before the Police as well as before this Court. Mr. Lakhani further contended that respondent No.2 filed another Suit being Special Civil Suit No. 615 of 2014 in the month of November, 2014 in relation to the same land against the person who had purchased the land from respondent No.2 and his financial partner who had signed the sale-deed, as a confirming partner to the sale. Mr. Lakhani stated that the petitioner had appeared in the referred Suit for the partner of respondent No.2, who is one of the R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 defendants. The said

defendant No.1 had given an application Exh-19 under Order 7 Rule 11 on 17.1.2015 seeking rejection of the plaint and the petitioner as an advocate appearing for the defendant had extensively argued the said application, Mr. Lakhani submitted that the respondent No.2 as a counterblast immediately placed on record of the Suit the copy of the application dated 14.2.2015 filed previously with the Police Commissioner, Vadodara/ Inspector, Raopura, which was against the present petitioner, purchaser and the financial partner of respondent No.2 and another advocate-cum-notary. Mr. Lakhani submits that the application Exh-19 in the said Suit was decided and respondent No.2's Suit came to be dismissed and further process by way of Caveat (First Appeal No.601/2016) was filed before this Court on 12.2.2016, which was served on the respondent on the same day, who thereby came to know about the adverse outcome of the Regular Civil Suit No. 615/2014 and, therefore, in the close proximity of time, Mr. Lakhani states that respondent No.2 played mischief by seeking order in Special Criminal Application No. 1710 of 2016 for direction to file FIR which was virtually with the suppression of material facts.

5. Mr. Vimal Patel, learned advocate with Mr. Devarshi Shah, learned advocate for respondent No.2-complainant submitted that the case against the petitioner is made out on the basis of highly disputed evidence and disputed facts, which require full- fledged trial. Mr. Vimal Patel submitted that the petitioner claiming himself to be a reputed advocate has misplayed with the complainant who is well aware of the legal proceedings and R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 damage to the legal rights of the respondent No.2. Mr. Patel submitted that the Vakalatnama and the Application Exh-34 under Order 7 Rule 11 of CPC were not signed by the complainant. It was not duly affirmed and verified by respondent No.2, who was not aware of the proceedings and behind his back, by putting false signature of respondent No.2, the proceedings were conducted without his consent. Referring to the copy of pass-port, Mr. Patel submitted that respondent No.2 was on Europe tour for 44 days from 9.6.2011 to 22.7.2011 and the son of respondent No.2 Ronak Patel had been to U.K. Nottingham for studies, who graduated as Msc. in Engineering Management from Nottingham Trent University and was working there for a year and thus respondent No.2's son Ronak had no contact with the petitioner in the year 2011 and 2012 and it was only in the year 2013, Ronak Patel came in contact with the petitioner and respondent No.2 hired him a lawyer in Paras Petroleum Pump Land Matter and that is how the petitioner got the e-mail address of the son of respondent No.2. Mr. Patel submitted that the respondent No.2 had no knowledge of any Vakalatnama sent to his son through e-mail and the signature in question is fake. The E-mail sent to the son of the respondent No.2 is fabricated and it is alleged that such pre-dated emails has been generated by spoofing techniques.

5.1 Mr. Patel further states that the Notary Register also shows that false and fabricated signatures were procured which are required to be examined by the Court during the trial. Mr. Patel further stated that the Police closure report was never informed, and, therefore, respondent No.2 approached this Court by way of R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 Special Criminal Application for direction to lodge the complaint and the impugned FIR is only after the direction of this Court.

5.2 Mr. Patel, learned advocate states that the respondent No.2 was client of petitioner in the year 2013-2014 in a land matter of Paras Petrol Pump and was never his client in the year 2011 in Civil

Suit No.533 of 2011. He had no relations with the petitioner and had never met before and even in the Civil Suit No. 533 of 2011, proof regarding the payment bills dated 8.11.2013 provided by the petitioner and the payment of Rs.2 lakh vide 2 cheques dated 8.01.2014 and cash voucher dated 20.5.2014 would support the case of the respondent. Mr. Patel states that the petitioner has refunded 50% of the fees i.e. Rs.1 Lakh by way of cheque of Kotak Mahindra Bank in view of the withdrawal as an advocate for Paras Petrol Pump land matters. It is the case of respondent No.2 that after studying all the 5 cases of Paras Petrol Pump Land Matter, the petitioner was of the opinion that there was need to focus on 2 cases out of 5 and, therefore, provided bill No. 102/2013 on 8.11.2013 which was for appearance and argument for the application for injunction and drafting of note and conferences and consultation in Regular Civil Suit No.996/2011 and fees was Rs.2,08,000/-, and while drafting of the Appeal, filing and attending the matter before the Deputy Collector, the Bill No. 103/2013 was for Rs.1,25,000/-. Mr. Patel states that the said bills too clear the fact that no fees was decided for the case No. 533 of 2011.

5.3 Relying on the case of Neeharika Infrastructure Pvt. Ltd v.

R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 State of Maharashtra and other, reported in 2021 SCC OnLine SC 315, Mr. Patel submitted that the Police has statutory right and duty to investigate the cognizable offence and such process should not be thwarted by the Court more so at the initial stage. Further adding to the fact stated that the impugned FIR is registered on the direction of this Court and that the Court should restrain itself from usurping jurisdiction of the police and that the power under Section 482 of Cr.P.C. is to be exercised very cautiously and with self-restrain, as quashing of the FIR would scuttle the legitimate right of the complainant to have an inquiry and investigation by the Police on the FIR disclosing the commission of a cognizable offence.

6. Ms. Monali Bhatt, learned APP relying on the report of the Police Inspector, Raopura Police Station, Vadodara City dated 4.10.2021, states that in collusion accused No.1 to 4 had produced Vakalatnama on 13.7.2011 in the Hon'ble Court and an affidavit on 19.11.2011 is without the consent of the complainant with a forged signature on it, false document has been used as true and, thereby, has committed the offence of cheating and breach of trust and has stated that since the matter is long pending in this Court, accused are yet to be arrested and it is necessary that the charge-sheet be filed against them.

7. This Court in Special Criminal Application (Direction to lodge FIR/ complaint) No.1710 of 2016, has observed as under:

"By this writ Application preferred under Article 226 of the Constitution of India read with Section 482 of the Code of R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 Criminal Procedure, the petitioner complains of inaction on the part of the police authorities in not registering the First Information Report, pursuant to the complaint given in writing on 14th February 2015. It is the say of the petitioner that despite giving complaint in writing, till this date no steps have been taken against the accused named therein nor his complaint is registered by the police.

Rule returnable forthwith. Learned APP Mr. JK Shah and waives service of notice of rule for and on behalf of respondent-State.

Having heard learned advocates appearing for the respective sides, the grievance putforth by the petitioner can be put an end to in wake of the decision of the Apex Court rendered in case of Lalita Kumari v. Government of Uttar Pradesh & Anr., reported in (2014) 2 SCC 1, wherein the Court has held thus, "111. In view of the aforesaid discussion, we hold :

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under :

(a) Matrimonial disputes/ family disputes;

(b) Commercial offences;

(c) Medical negligence cases;

(d) Corruption cases;

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

The respondent no. 6-Police Inspector, Ravpura Police Station, Ravpura, Vadodara shall take into consideration the complaint of the petitioner dated 14th February 2015 and decide whether the same discloses commission of any cognizable offence or not. If the complaint and other materials, discloses commission of any cognizable offence, then in such circumstances, the FIR be registered forthwith. However, if the respondent no.6 is of the opinion, after going through the complaint that preliminary inquiry is to be made R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 to know whether cognizable offence is made out, the same shall be done. After that exercise is carried out, if no case is made out for registration of FIR, then in such a situation, the petitioner be informed in writing about such decision by giving reasons in brief, within a period of one week from the date of receipt of copy of this order.

It is clarified that this Court has not expressed any opinion on the merits of the matter.

Special Criminal Application stands disposed of.

Rule made absolute with no order as to costs. Direct service is permitted.

8. The Hon'ble Court (Coram: Hon'ble Ms. Justice Sonia Gokani) had specified in the order to Police Inspector Raopura Police Station to take into consideration the complaint of the petitioner dated 14.2.2015. The Police Inspector, Raopura Police Station, Vadodara City had to decide whether the same discloses commission of cognizable offence or not, and if the complaint and other materials, finds disclosure of commission of cognizable offence, then in that circumstances, it was directed to register FIR forthwith. Further, it was also directed to the Police Inspector, Raopura Police Station, Vadodara that if it comes to the opinion, on going through the complaint, that the preliminary inquiry was to be made, to find out whether cognizable offence was made out, the Court had directed the Police to do the same and after such exercise, if the Police finds that no case is made out for registration of FIR, then in that R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 situation, the Court directed the Police to inform the petitioner in writing about such decision by giving reason in brief within a week from the date of receipt of the order. The Court had not even gone into the merits of the matter. Thus, the Police Inspector, Raopura Police Station, Vadodara City knew of the complaint, thus, prior to filing of the impugned FIR, was required to find out the

fate of the application dated 14.6.2015 of the respondent. The Police was also directed to decide on the application to find out whether there is any commission of cognizable offence.

9. The order of the Court in Special Criminal Application (Direction to lodge- FIR/ Complaint) No. 1710 of 2016 was on 21.3.2016. The closure report is dated 4.6.2015. Inspite of the closure report on record of the same Police Station i.e. Raopura Police Station, Vadodara City, the concerned Police disregarding the said fact, had registered the FIR on 8.4.2016. The closure report dated 4.6.2015 by Police Inspector, Raopura Police Station, Vadodara City did not find any offence in the matter and the report has reflected about the pendency of the Suit No. 533 of 2011 and Suit No. 615/2014. The said report dated 4.6.2015 reflects that the concerned Police Inspector Mr. B.A. Chaudhary had recorded the statement of the complainant. The Police while making the inquiry had also recorded the statement of the petitioner and even of Mr. Mukesh Bhimraj Gupta and the Notary Yogeshbhai Narendrabhai Joshi who had informed the Police that the complainant himself had come with the papers and the affidavit was typed in his presence and the complainant himself R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 had signed on it. The petitioner had informed the Police that the complainant himself has informed him of the receipt of Notice in Civil Suit No. 533 of 2011 and had instructed him to prepare the papers and those papers were collected from him and signed before the Notary. Thereafter, he had produced the same before the Court and he had informed the Police that he was conducting all the Civil Suits of the complainant and that there was no false signature.

10. The Police filed closure report on the premise that both the Suits were pending before the Court and the allegations were civil in nature. The said report of the Police Inspector, Raopura Police Station, Vadodara City dated 4.6.2015 has not been challenged by the complainant. When the dispute between the parties are of civil nature and when no crime is registered, the Police does not have jurisdiction to interfere in the civil dispute. Where the civil litigation is before the Court of law or before the Tribunal, the Police should refrain itself to interfere in the civil disputes and in case if the complaint is made in relation to dispute pending in Civil Courts, the citizen should be advised by the Police to resolve the dispute through duly constituted Court of law. The duty to resolve the civil dispute is entrusted to judiciary and Police has no such power. The Police cannot be made the adjudicators of the disputes interse between the parties. This matter is essentially in the domain of Civil Court.

11. The Vakalatnama, as disputed, was produced before the Court of law and the appearance of the petitioner was on record.

R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 The Application under Order 7 Rule 11 CPC was filed on 19.11.2011, respondent No.2 had also engaged the petitioner as an advocate in the proceedings of Regular Civil Suit No. 996 of 2011, Special Civil Suit No. 525 of 2009, 280/2008, Rent Suit No. 102 of 2012 as well as in one revenue proceedings beig CTS/RA No. 103/2013. The respondent No.2 instituted Special Civil Suit No. 615 of 2014 on 27.4.2014. Prior to that, he had given Police complaint on 21.2.2014 against Mukesh Bhimraj Gupta alleging that he has failed to honour his liability to pay Income Tax with regard to the transaction of sale-deed dated 13.5.2011, thereafter the complainant proposed to withdraw the same by giving his statement to the Police. The

petitioner as Advocate filed his appearance on behalf of Mukesh Bhimraj Gupta in Special Civil Suit No. 615/2014 on 17.12.2014. The petitioner intimated the respondent No.2, through his son, about his retirement as advocate in six pending matters and the petitioner addressed a letter to respondent No.2 declaring his decision to discontinue as his lawyer and it is stated by the petitioner that he had returned back the fees of Rs.1 lakh as he had withdrawn himself as lawyer of respondent No.2. On 1.1.2015, the Associates of the petitioner informed by a letter to respondent No.2 of their discontinuance as lawyer in his Suit. Thereafter, on 14.2.2015, a complaint was filed before the Police Inspector, Raopura Police Station, Vadodara as well as Police Commissioner, Vadodara City alleging that the respondent No.2 had never engaged the petitioner as his lawyer, making allegation under Section 406, 420, 465, 467, 468, 471 and 114 of the IPC.

R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021

12. The facts suggest that in the Special Civil Suit No. 533 of 2011, Vakalatnama was produced, Order 7 Rule 11 application was given for rejection of the Plaint and application for expediting the hearing was also moved and from 9.11.2011 to the date 7.5.2015, till advocate Ms. Parul Parikh filed her appearance, no adverse order came to be passed against respondent No.2.

13. In the case of Mohammed Ibrahim and others vs. State of Bihar and another, reported in (2009) 8 SCC 751, it is observed that the term "fraud" is not defined in the Code. The dictionary definition of "fraud" is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines "fraud" with reference to a party to a contract. The judgment has dealt with the provision of Section 464, 467, 471, 420 of IPC. The relevant observation are reproduced as under:

> "7. The question that therefore arises for consideration is whether the material on record prima facie constitutes any offences against the accused. The contention of the appellant is that if the allegations made in the complaint and FIR, even if accepted to be true in entirety did not disclose the ingredients of any offence of forgery (sections 467 and 471) or cheating (section 420) or insult (section 504) or wrongful restraint (section 341) or causing hurt (section 323) and there was no other material to show any offence and therefore, their application ought to have been accepted.

8. This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. [See: G. Sagar Suri v. State of U.P. [2000 (2) SCC 636] and Indian Oil Corporation vs. NEPC India Ltd. [2006 (6) SCC 736]. Let us examine the matter keeping the said principles in mind.

Sections 467 and 471 of the Penal Code

9. Let us first consider whether the complaint averments even assuming to be true make out the ingredients of the offences punishable either under section 467 or section 471 of Penal Code.

10. Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

11. Section 470 defines a forged document as a false document made by forgery. The term "forgery" used in these two sections is defined in section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery.

12. Section 464 defining "making a false document" is extracted below :

R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 "464. Making a false document.--A person is said to make a false document or false electronic record---

First.--Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words `digital signature' wherever it occurs were substituted by the words `electronic signature' by Amendment Act 10 of 2009]."

13. The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of section 464 of Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 In short, a person is said to have made a `false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

15. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of `false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor

colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of `false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted.

Section 420 IPC

18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

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

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

14. Here the allegation is against an advocate, who is alleged to have filed Vakalatnama in the Suit before the Court without the instruction of complainant, and the signature on the Vakalatnama is not his, and affidavit produced in his name on 19.11.2011 in the Suit, executed before the Notary too, does not bear his signature, thus, both produced before Court under false signature. There is no allegation of entrustment of property, or accused having dominion over any property has dishonestly misappropriated or converted to his own use.

15. The Penal Code however defines `fraudulently', an adjective form of the word `fraud', in section 25, as follows :

R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 "25. 'Fraudulently" - A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise".

15.1 The term "fraudulently" is mostly used with the term "dishonestly" which is defined in section 24 as follows : "

> "24.. 'Dishonestly' - Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing "dishonestly".

16. An Advocate is a legal practitioner. Advocate is the only recognized class of persons entitled to practice law. Here in this present case, the advocate filed the Vakalatnama for the respondent No.2 and the application under Order 7 Rule 11 CPC which is filed for rejection of plaint, this recourse is recognised as legal practice, and such move in the Suits adopted by the Advocate is in the best interest of the litigant. The complainant has not suffered any loss, by such application in the Suit. Till 7.5.2015 the interest of complainant was well protected by the petitioner. The complainant has not alleged any wrongful loss to him much less any wrong caused to him. Had the Vakalatnama not produced in the suit on service of Summons/ Notice, the Suit would have been ordered to be proceeded exparte against the respondent No.2., which would have caused loss to him. Here the petitioner's Vakalatnama in the Suit No. 533/2013 is the voice representing respondent No.2 in the Court of law an application under Order 7 Rule 11 of CPC is the course of action adopted to protect the interest of the respondent No.2/ complainant. Till the time petitioner represented the complainant in the Suit, no R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 orders were passed by the Court to be considered as adverse, to have caused any loss to him.

17. In Vimla (Dr.) vs. Delhi Admn.- AIR 1963 SC 1572, Apex Court explained the meaning of the expression `defraud' thus:

> "14. .....The expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

17.1 To the facts of the case in Vimla (Dr.) v. Delhi Admin. (supra) the Hon'ble Court applied the above principles and held as under:

> "Certainly, Dr. Vimla was guilty of deceit, for though her name was Vimla, she signed in all the relevant papers as Nalini and made the insurance company believe that her name was Nalini, but the said , deceit did not either secure to her advantage or cause any non-

economic loss or injury to the insurance company. The charge does not disclose any such advantage or injury, nor is there any evidence to prove the same. The fact that Dr. Vimla said that the owner of the car who sold it to her suggested that the taking of the sale of the car in the name of Nalini would be useful for income-tax purposes is not of any relevance in the present case, for one reason, the said owner did not say so in his evidence and for the other, it was not indicated in the charge or in the evidence. In the charge framed, she was alleged to have defrauded the insurance company and the only evidence given was that R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021 if it was disclosed that Nalini was a minor, the insurance company might not have paid the money. But as we have pointed out earlier, the entire transaction was that of Dr. Vimla and it was only put through in

the name of her made minor daughter for reasons best known to herself. On the evidence as disclosed, neither was she benefited nor the insurance company incurred loss in any sense of the term".

17.2 In view of the facts it was held that she was not guilty of the offence under Section 467 and 468 of the Indian Penal Code.

18. In the case on hand, all the Sections invoked against the petitioner, pre-supposes the existence of forgery. The condition precedent for forgery is making a false document. The definition of "false document" is a part of the definition of "forgery". Both must be read together. If so read, the ingredients of the offence of forgery would be (1) fraudulently signing a document or a part of a document with an intention of causing it to be believed that such document or part of a document was signed by another or under his authority ; (2) making of such a document with an intention to commit fraud or that fraud may be committed.

18.1 Fraud is made up of two ingredients, deceit and injury. The principal object of every fraudulent person is to derive some advantage though such advantage has a corresponding loss or risk of loss to another. What benefit the petitioner derived and what injury the complainant sustained could not be found from the bare reading of FIR.

R/SCR.A/2424/2016 JUDGMENT DATED: 27/10/2021

19. There has been no intention of the petitioner as respondent's Advocate in the Suit to cause any wrongful gain to him, act of filing appearance by way of Vakalatnama and the application Order 7 Rule 11 of CPC, has not caused any wrongful loss to the complainant. There was no intention of the petitioner to defraud the complainant. Even if it is considered that the Vakalatnama and the application made under Order 7 Rule 11 of CP did not bear the signature of the complainant however by such act of petitioner of using the same in the Suit, there is no injury caused to the complainant. Further, the petitioner has not got any benefit or advantage by filing the Vakalatnama and defending the complainant in the Suit. The act of the petitioner has not caused any harm to the complainant. No case is made out for the trial to proceed against the petitioner.

20. In the result, the petition is allowed. The impugned FIR being C.R. No. I-106 of 2016 dated 8.4.2016 registered with Raopura Police Station, Vadodara City and the proceedings initiated in pursuance thereof qua petitioner are quashed and set aside. Rule is made absolute.

(GITA GOPI,J) SAJ GEORGE