

Gujarat High Court

Bhupatbhai Nanjibhai Gajera vs State Of Gujarat on 27 August, 2021

Bench: B.N. Karia

R/SCR.A/5613/2018

CAV JUDGMENT DATED: 27/08/2021

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 5613 of 2018
With
CRIMINAL MISC.APPLICATION (FOR STAY) NO. 1 of 2018
In R/SPECIAL CRIMINAL APPLICATION NO. 5613 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE B.N. KARIA

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

2 To be referred to the Reporter or not ? YES 3 Whether their Lordships wish to see the NO fair copy of the judgment ?

4 Whether this case involves a NO substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

===== BHUPATBHAI
N A N J I B H A I G A J E R A V e r s u s S T A T E O F G U J A R A T
===== Appearance:

MR. BHAUMIK DHOLARIYA(7009) for the Applicant(s) No. 1,2,3,4,5 MS MOXA THAKKAR,
A D D I T I O N A L P U B L I C P R O S E C U T O R (2) f o r
===== CORAM:HONOURABLE MR. JUSTICE B.N. KARIA Date : 27/08/2021 CAV JUDGMENT

1. By preferring this petition petitioners have challenged the order dated 18th January, 2018 passed by the learned Additional Chief R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 Metropolitan Magistrate, Court No.12, Ahmedabad in Inquiry Case No.7 of 2012, issuing summons to the accused persons and others observing that prima facie offence is made out by the petitioners.

2. Heard learned advocate Mr. Bhaumik Dholariya for the petitioners, learned APP Ms. Moxa Thakkar for the respondent-State and learned advocate Mr. J.A. Adeshra for the respondent No.2.

3. The case of the prosecution in brief can be summarized as under :-

4. On 29th March, 2012, the opponent no.2 / complainant herein filed a private complaint before the learned Metropolitan Magistrate, Ahmedabad against the petitioners herein and others for the offences punishable under Sections 406, 420, 465, 467, 468, 471 and 120(B) of the Indian Penal

Code, 1860 (for brevity "IPC") which was registered as Inquiry Case No.7 of 2012. Initially, the learned Trial Court ordered for Police Inquiry. Thereafter, vide order dated 18th R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 January, 2018, the learned Additional Chief Metropolitan Magistrate Court No.12, Ahmedabad issued summons to all the accused including the petitioners herein which came to be served upon the petitioners in April, 2018. Inquiry Case No.7 of 2012 thereafter culminated into Criminal Case No.5942 of 2018. The learned Trial Court made certain observations against the petitioners that prima facie offence is made out by the respondent No.2- original complainant. Hence, the petitioners have approached this Court under Articles 14, 226 and 227 of the Constitution of India as well as under Section 482 of the Code of Criminal Procedure, 1973 with a prayer to quash and set aside the Criminal Case No.5942 of 2018 (Inquiry Case No.7 of 2012) and the order dated 18th January, 2018 passed by the learned Additional Chief Metropolitan Magistrate Court No.12, Ahmedabad qua the petitioners herein.

5. Learned advocate Mr. Bhaumik Dholariya R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 appearing for the petitioners submitted that the petitioners are falsely implicated in the complaint and it is a clear abuse of process of the law. It is further submitted that the Inquiry Case No.7 of 2012 is now culminated into Criminal Case No.5942 of 2018. It is further submitted that the land in question was purchased by the present petitioners and they are the bonafide purchasers. There is no offence of forgery as defined under Section 463 read with Section 464 of the Indian Penal Code made out against the petitioners. It is further submitted that the land was purchased by the petitioner Nos.1 to 4 in October-2010 from Bairajba Jivaji through registered sale deed. The petitioner No.5 is a witness to the said transaction. It is further submitted that the petitioners have nothing to do with the alleged offence of forgery committed by Bairajba Jivaji in the year 1997 as they were not even aware about the said allegations at the time of purchase of the land in question. The petitioners are involved in the alleged R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 offence with malafide intention to apply pressure tecticks and to settle the dispute with the opponent No.2/complainant. It is further submitted that no offence of forgery much less offence punishable under Sections 465, 467, 468 and 471 of the Indian Penal code is constituted against the petitioners. It is further submitted that the petitioners have never induced the complainant by making any false representation or no offence of criminal breach of trust or cheating has been made by the petitioners. It is further submitted that alleged forged pedhinama was prepared by Bairajba Jivaji in the year 1997, based on which, entry was mutated. That petitioners were never in picture at that time and in October-2010, through registered sale deed, petitioner nos.1 to 4 have purchased the subject land, and therefore, no offence of criminal conspiracy can be said to have been committed. It is further submitted that the dispute is regarding the right title and interest in the subject land. That the R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 dispute can be decided only by the Civil Court in respect of interest right or title. That Regular Civil Suit No.719 of 2010 was already filed by respondent No.2 and others, heirs of Nanduba Jivaji and others before the learned Additional Civil Judge Ahmedabad (Rural) and vide order dated 25 th April, 2016, injunction for interim application Exhibit-5 was rejected by the Civil Court and no appeal was preferred by the respondent no.2. That the dispute is predominantly civil in nature and however it has been given criminal color by the respondent No.2. It is further submitted that the impugned complaint was filed after more than 15 years for the alleged forgery and cheating. The petitioner nos.1 to 4 have purchased the subject land in October, 2010 and the impugned complaint was filed

on 29th March, 2012 and petitioners were served with summons in April, 2018. That no justified explanation for delay was given by the respondent no.2 in his complaint which also suggests that complaint was filed with R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 malafide intention. Hence it was requested by learned advocate appearing for the petitioners to quash and set aside the Criminal Case No. 5942 of 2018 (Inquiry Case No.7 of 2012) and order dated 18th January, 2018 passed by the learned Additional Chief Metropolitan Magistrate Court No.12, Ahmedabad qua the petitioners.

6. In support of the arguments learned advocate appearing for the petitioners has relied upon the following judgments :-

1. Prabhu Chawla Versus State of Rajasthan and Another reported in 2016 (16) SCC 30 (Three Judges Bench Judgment);

2. Sheila Sebastian Versus R. Jawaharaj and another reported in 2018 (7) SCC 581;

3. Mohammed Ibrahim and others Versus State of Bihar and another, reported in 2009 (8) SCC 751;

4. Prakash Ramchandra Barot Versus State of Gujarat, reported in 2011 (3) GLH 211.

7. Per contra learned advocate appearing for the respondent No.2 has strongly objected the R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 submissions made by the petitioners and submitted that detailed order was passed by the learned Additional Metropolitan Magistrate, Court No.12 observing that prima- facie offence under section 120(B) of Indian Penal Code was established by the complainant, and therefore, summons was issued for the offence punishable under section 406, 420, 465, 467, 468, 471, 120(B) of Indian Penal Code by an order dated 18th January, 2018. It is further submitted that before execution of registered sale deed dated 25th November, 2010, a public notice for issuance of title clearance certificate was issued in daily newspaper "Divyabhaskar" on 16th August, 2010 through an advocate Mr. Bharat K Patel in respect of agricultural land bearing survey/block No.74, 162 and 163. It is further submitted that another public notice was also issued in the daily newspaper namely "Divyabhaskar" dated 25th August, 2010 through an advocate Mr. Bhavesh B. Dave, and at that time, legal heirs of Nanduba claimed R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 their rights and shares as the owner of the subject land. It is further submitted that written objections dated 28th August, 2010 were sent by the legal heirs of the deceased Nanduba through learned advocate Mr. Bharat K. Patel in respect of the subject land. It is further submitted that though no title clearance certificate was issued in respect of the subject land, the accused no.4 to 7 of the original complainant of the complaint, who were fully aware about the facts, entered into transaction of purchasing the land. It is further submitted that accused no.1, in collusion with the other accused, have sold (petitioner Nos.1 to 4) through registered sale deed. It is further submitted that after execution of registered sale deed on 28th October, 2010, 15th October, 2010, another public notice for issuance of title clearance certificate was issued in the daily newspaper "Sandesh" on 23rd March, 2011 through Mr. Mahesh V. Pandit an advocate. That he is the R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 neighbor of the petitioner no.1 and has signed as witness. However, he was fully aware about the

objections and public advertisement as per the earlier public notice for issuance of title clearance certificate. That collusion of the petitioners with the other co-accused is prima-facie established. That accused nos.2 and 8 of the complaint were aware about the facts, however, they have signed as witnesses in the sale deed. It is further submitted that no will was executed by Maniba, however, it is falsely stated that she had executed a will dated 20th July, 1998. Entry no.3765 dated 27th September, 1997 is made in Village Form No.6 and name of Maniba and Bairajba were entered in the revenue record as legal heirs of Jivaji Vajesing Vaghela. It is further submitted that in Village Form No.7/12, name of deceased Nanduba was shown and there is nothing on record to show that there are no legal heirs of Nanduba, the sale deed could not have been executed by R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 excluding the names of legal heirs of Nanduba. That the present petitioners have not filed any proceedings against the Bairajba after execution of sale deed which is an additional factor to show that there is collusion between the accused named in the original complaint. It is further submitted that names of legal heirs of Nanduba were entered in the revenue record after execution of registered sale deeds dated 25th November, 2010 which also shows that earlier panchnama was wrongly prepared. That while coming to know about the execution of sale deed in October, 2010 an application was submitted by the complainant on 5th February 2011 to Kanbha Police Station. Thereafter, another application was also submitted to DSP Ahmedabad (Rural) on 18th February, 2011 and other authorities. That private criminal complaint was filed before the Metropolitan Magistrate Court No.12 Ahmedabad on 29th March, 2012, and therefore, it is not correct to say that complainant has set into motion R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 in criminal machinery after 15 years. That complainant has made out prima-facie case against the accused persons which would require leading of evidence and criminal complaint cannot be quashed at threshold in exercise of powers under Section 482 of the Criminal Procedure Code. It is further submitted that it is a fit case to permit the trial Court to proceed and matter be decided on merits, and therefore, it is requested that as the petition is devoid of merits, it should be dismissed in the interest of justice. In support of his arguments, learned advocate appearing of the respondent No.2 has relied upon the judgment reported in (2010) 11 SCC 226.

8. Learned APP has submitted that report of the police officer is placed on record and the same may be considered by the Court. It is further submitted that at this juncture the prayer made by the petitioners cannot be granted. Learned APP has further submitted in her arguments that from the complaint itself, R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 offence as alleged against the petitioners, is prima-facie disclosed by the prosecution, and therefore, this Court may not interfere with the investigation into the case and permit the investigation into the offence alleged to be committed. It is further submitted that once an offence is disclosed, the investigation into the offence must necessarily follow in the interest of justice. It is further submitted that the Court has mainly to take into consideration the complaint or the FIR and the Court may in appropriate cases, take into consideration the relevant facts and circumstances of the case. It is further submitted that if for a consideration for the relevant materials, the Court is satisfied that the offence is disclosed the Court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence. It is further submitted R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 that on account of the order passed by this Court on 10.08.2018, the proceedings of

Criminal Case No.5942 of 2018 qua the petitioners before the learned Additional Chief Metropolitan Magistrate Court No.12, Ahmedabad is stayed and investigating agency is not in a position to carry out the investigation against the petitioners however, prima facie case is made out by the prosecution and hence it is requested to dismiss the petition.

9. Having heard learned advocates appearing for the respective parties as well as learned APP, it appears from the complaint lodged by the respondent No.2 against the petitioners herein and others that Bairajba Jivaji sold the subject land to the petitioner Nos. 1 to 4 in October - 2010 through registered sale deed wherein petitioner No.5 was shown as a witness to the said transactions. It is not in dispute raised by the complainant that no registered sale deed was executed by Bairajba Jivaji or there was no signature of Bairajba R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 Jivaji. It was the case for the respondent No.2 that even though the respondent No.2 and others heirs of Nanduba are the legal heirs of Jivaji Vajesang and they had share in the subject land, Bairajba sold the said land to the petitioner Nos.1 to 4. Further allegations were made against the Bairajba that she had submitted false pedhinama for mutation of heirship entry in the year 1997. From the averments made in the complaint, it appears that the petitioners have nothing to do with the alleged offence for forgery committed by Bairajba Jivaji in the year 1997 as they were not a party or aware about the said allegations when they purchased the subject land in 2010. If we consider the alleged offence punishable under Section 406 and 420 of Criminal Procedure Code i.e. criminal breach of trust and cheat respectively, it is nowhere stated in the complaint by the respondent No.2 that any false representation was made to respondent No.2 or he was induced by any false R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 representation by the petitioners. The alleged cheating, if any, there complete absence of ingredients in the petition. If we consider the offence of criminal conspiracy, as alleged in the complaint, false pedhinama was prepared by Bairajba Jivaji in the year 1997, based upon which, heirship entry was mutated. From the allegations made in the complaint, it appears that present petitioners were not in a picture when the alleged pedhinama was prepared in the year 1997. The subject land was purchased by the present petitioners No.1 to 4 through registered sale deed in 2010 and therefore, it cannot be said that any criminal conspiracy is hatched by the present petitioners. Signature of Bairajba Jivaji in the sale deed executed in favour of the petitioners No.1 to 4 was not disputed by the respondent No.2 in his complaint. The main grievance raised in the complaint pertains for title, interest and rights in respect of the subject land and executing the sale deed R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 by Bairajba Jivaji in favour of the petitioner Nos.1 to 4. Raising such a grievance in the complaint will not render the registered sale deed as false document within a meaning of Section 464 of Indian Penal Code.

10. Hon'ble Apex Court in the case of Sheila Sebastian Versus R. Jawaharaj and another reported in 2018 (7) SCC 581 has discussed this issue of making a false document and forgery, referring certain other judgments. In this case, the Hon'ble Apex Court has made close scrutiny of Section 463 and 464 of Indian Penal code which provides as under :-

"19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery

under Section 463, IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and untill ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete.

20. The key to unfold the present dispute lies in understanding Explanation 2 as given in Section 464 of IPC. As Collin J., puts it precisely in *Dickins v. Gill*, (1896) 2 QB 310, a case dealing with the possession and making of fictitious stamp wherein he stated that to make, in itself involves conscious act on the part of the maker. Therefore, an offence of forgery cannot lie against a person who has not created it or signed it.

21. It is observed in the case *Md. Ibrahim and Ors. vs. State of Bihar and Anr.*, (2009) 8 SCC 751 that-

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.

22. In *Md. Ibrahim (supra)*, this Court had the occasion to examine forgery of a document purporting to be a valuable security (Section 467, IPC) and using of forged document as R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 genuine (Section 471, IPC). While considering the basic ingredients of both the offences, this Court observed that to attract the offence of forgery as defined under Section 463, IPC depends upon creation of a document as defined under Section 464, IPC. It is further observed that mere execution of a sale deed by claiming that property being sold was executant's property, did not amount to commission of offences punishable under Sections 467 and 471, IPC even if title of property did not vest in the executant.

23. The Court in *Md. Ibrahim (supra)* observed that:

There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When

a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

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 R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

24. In *Mir Nagvi Askari vs. Central Bureau of Investigation*, (2009) 15 SCC 643, this Court, after analysing the facts of that case, came to observe as follows:

A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else. The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criteria of the said section is also not applicable to the present case.

The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 before us could not have been convicted with the making of a false document.

25. Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

26. The definition of false document is a part of the definition of forgery. Both must be read together. Forgery and Fraud are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that false document. Hence, neither respondent no.1 nor respondent no.2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same."

11. It further appears from the plain reading of the complaint that the dispute is with R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 respect to the right, title and interest in the subject land. Assuming for a moment that both the parties have their rights, title or interest in the subject land, then such title and rights can be decided only by the competent Civil Court. Dispute in the present case in respect of the rights, title and interest appears to be purely civil in nature. Remedy for the grievance of the complainant is to get set aside the registered sale deed executed by Bairajba and others in favour of the petitioners No. 1 to 4, for which the respondent No.2/complainant has already filed Regular Civil Suit No.719 of 2010 before the learned Additional Civil Judge, Ahmedabad (Rural) and vide order dated 25.04.2016 interim injunction application (Exh.5) was rejected by the Civil Court. The complainant has tried by giving criminal color of the civil dispute in the present case. Further, it appears that alleged pedhinama for heirship entry in the year 1997 was purchased by Bairajba Jivaji. The lands R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 bearing block nos.74, 134, 162, 163, 164 and 169 of mouje Hathijan Tal. Dascroi, District Ahmedabad were originally belongs to deceased Jivaji Vajesang, who passed away on 01.05.1997. Heirship entry No.3765 was entered in the Village Form No.6 by which name of Maniba Jivaji (widow of Jivaji) and Bairajba Jivaji (daughter of Jivaji) came to be mutated in the Block Nos.162, 163, 164 and 169 on 30.04.1998. It further appears that block Nos. 74 and 134 were mixed to be mentioned in heirship entry No.3765 and therefore, separate heirship entry No.3847 came to be recorded on 1.1.1999 and name of Maniba Jivaji and Bairajba Jivaji were mutated in block nos. 74 and 134. The said entry was certified on 16.03.1999. Maniba Jivaji executed a will on 14/20 May, 1998 in favour of Bairajba Jivaji. The petitioner Nos.1 to 4 purchased the land on 15.10.2010 and 18.10.2010 from Bairajba Jivaji. Petitioner no.5 has signed as witness in the registered sale deed in favour of the R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 petitioner Nos.1 to 4 in respect of block Nos. 74 and 134. Another sale deed was also similarly registered for block no. 162 in favour of the petitioner nos.1 to 4 on 28.10.2010 wherein also petitioner No.5 has signed as witness in the said registered sale deed. It also appears that various proceedings are pending before the different revenue authorities with respect to the various entries of the subject land particularly with respect to entry Nos.4912, 5021, 5022, 5024, 5025 and 5836. It also appears that Bairajba Jivaji through her advocate issued a public notice for title clearance in the daily newspaper "Divyabhaskar" on 17.08.2010. Respondent No.2-opponent No.2 and others through their advocates raised objections and issued notice to the learned advocate of Bairajba Jivaji. Opponent No.2 and others also issued a public notice / caution in the daily newspaper 'Divyabhaskar' asking the public not to deal with the property. It can never be said that

R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 petitioners were aware about the public notice issued by the Bairajba Jivaji and objections raised by the respondent No.2 and published both notices. It also appears that petitioner Nos.1 to 4 through their advocates have also issued one public notice for title clearance on 24.03.2011 in daily newspaper 'Sandesh'. It further appears that in Regular Civil Suit No.719 of 2010 filed by the respondent No.2 before the learned Civil Judge, Ahmedabad (Rural), whereas petitioners were not joined as a party. An application for interim injunction was also filed by the respondent No.2 in the civil suit with a request to grant interim injunction in his favour which was dismissed. Thereafter, in view of sale of subject land, the respondent No.2 filed amended interim injunction application vide Exh.42 in Regular Civil Suit No.719 of 2010 and joined the present petitioner Nos.1 to 4 herein. The learned Additional Civil Judge, Ahmedabad (Rural) vide order dated 25.04.2016 rejected both the R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 injunction applications of the plaintiff at Exh.5 and Exh. 43 forthwith. As per the submissions made by the learned advocates appearing for the petitioners, plaintiff in the suit have not challenged the order passed by the learned Civil Judge, Ahmedabad (Rural), dated 25.04.2016, before the higher forum and said order has attained finality.

12. It is an undisputed fact that both the sides are before the Civil Court since the year 2010. Civil Court has already seized the subject matter in the suit filed by the respondent No.2. The entire dispute is with regard to the right, title and interest over the land of block Nos.74, 134 and 163 purchased by the petitioner Nos.1 to 4 by registered sale deed in their favour from Bairajba Jivaji. Who is the actual owner of the land in question or there are two owners of the land in question, Civil Court can only answer after deciding the respective rights of the parties. What is important is, as to whether any offence said to have been R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 committed even if the entire FIR is accepted as it is. It is settled law that if the FIR fails to disclose commission of any offence, then it deserves to be quashed. Otherwise, it amount to abuse of process of law. It is not in dispute that the sale deed has been executed by the Bairajba Jivaji with her genuine signature. What is disputed right, title and interest of the original owner to execute the sale deed in favour of the petitioner Nos.1 to 4. The dispute raised in the complaint itself will not render the said deed of the year 2010 as false documents within the meaning of Section 464 of Indian Penal Code so as to constitute offence punishable under Sections 465, 467, 468 and 471 of Indian Penal Code as well as under Sections 406 and 420 of Indian Penal Code. The law in this regard is now very well settled. The Hon'ble Supreme Court in the case of Mohmad Ibrahim and Others versus State of Bihar and others reported in 2010 (1) GLH 184, exhaustively explained as to R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 what will constitute forgery. The ratio has propounded by the Hon'ble Supreme Court in the said case squarely applied in the present case. Later on same view was taken by this Court in case of Prakash Ramchandra Barot and others Versus State of Gujarat and others reported in (2011) 3 GLH 211. This Court (Hon'ble Mr. Justice J.B. Pardiwala) in paragraph Nos. 31 and 32 has observed as under :-

"It is well settled that in order to constitute an offence of cheating, it must be shown that the accused had fraudulent or dishonest intention at the time of making the representation or promise and such a culpable intention right at the time of entering into an agreement cannot be presumed merely from his failure to keep the promise subsequently. My prima facie examination satisfies me that the averments in the FIR if assume to be true, do not make out any offence under Sections 406, 420,

465, 467, 468, 471, 447, 186, 120B and 504 of IPC."

13. In order to attract the provisions of Sections 413 and 420 of Code of Criminal Procedure Code, 1973, the guilty intent, at the time of making the promise is a requirement and an essential ingredient R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 thereto and subsequent failure to fulfill the promise by itself would not attract the provisions of Section 413 or Section 420. Mens rea is one of the essential ingredients of the offence of cheating under Section 420. As a matter of fact Illustration (g) to Section 415 makes the position clear enough to indicate that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to a civil action for breach of contract.

14. Learned advocate appearing for the respondent No.2 has relied upon the judgment of the 2010 (XI) SCC 226, wherein the Hon'ble Apex Court in paragraph No.20 has observed in the judgment as under :-

"Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section

482."

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15. In the case on hand, apart from specific allegations about the transportation of Jaggery for preparation of illicit distilled liquor, prosecution had also placed reliance on laboratory analysis report which mentioned that the transported Jaggery was fit for fermentation, producing alcohol unfit for consumption. Under these circumstances, Hon'ble Apex Court views whether the raw material in existence would be sufficient for holding the accused persons concerned guilty or not has to be considered only at the time of trial. It is further viewed that at the time of framing the charge, it can be decided whether prima facie case has been made out showing the commission of offence and involvement of the charged persons. The judgment relied upon by the learned advocate appearing for the respondent No.2 may not assist because of the fixed facts of the Hon'ble Apex Court.

16. In view of the matter, it appears that both the sides are claiming their right in their R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 own ways. So far as the title, right or interest in the property is concerned, they can be decided only by the competent Civil Court and both the sides are already before the Civil Court in Regular Civil Suit No.719 of 2010 since past ten years and the relevant proceedings have also been undertaken, hence continuation of such prosecution will genuinely amount of gross abuse of process of law.

17. The present case falls another categories where accused complaint of harassment through the court process. There is no total barred on the exercise of the inherent powers where abuse for the process of Court or other extra ordinary situations exercised the Courts jurisdiction. This Court has examined the matter under its inherent powers. The present case undoubtedly falls for exercising powers of the High Court in accordance with Section 482 of the Code of Criminal Procedure, 1973. Accordingly, this petition is allowed. The impugned order passed by the learned R/SCR.A/5613/2018 CAV JUDGMENT DATED: 27/08/2021 Additional Chief Metropolitan Magistrate, Court No.12, Ahmedabad (Rural) qua the petitioners herein in Criminal Case No. 5942 of 2018 (Inquiry Case No.7 of 2012) dated 18 th January, 2018 and consequent proceedings are hereby quash and set aside.

18. Rule is made absolute.

(B.N. KARIA, J) ORDER IN CRIMINAL MISC. APPLICATION (FOR STAY) NO. 1 of 2018 In view of the order passed in main petition, Criminal Misc. Application No.1 of 2018 filed for stay does not survive and stands disposed of accordingly.

(B.N. KARIA, J) Pallavi