

Gujarat High Court

Chandrakant Manilal Mehta vs State Of Gujarat on 29 September, 2022

Bench: Vaibhavi D. Nanavati

R/SCR.A/1658/2017

JUDGMENT DATED: 29/09/2022

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 1658 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ?  | NO |
| 2 | To be referred to the Reporter or not ?   | NO |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ?   | NO |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | NO |

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CHANDRAKANT MANILAL MEHTA

Versus

STATE OF GUJARAT & 1 other(s)

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Appearance:

MR UDAY R BHATT(192) for the Applicant(s) No. 1

MR HARESH J TRIVEDI(927) for the Respondent(s) No. 2

MS. MAITHILI D. MEHTA, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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R/SCR.A/1658/2017

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ORAL JUDGMENT

1. By way of the present application, the applicant herein has challenged the impugned order dated 29.06.2015 passed by the learned Chief Judicial Magistrate Court, Jamnagar below Exh.7 in Criminal Case No. 1672 of 2013, and the supplementary charge-sheet dated 21.10.2015 bearing No. 68A/13, filed by the I/O before the learned Chief Judicial Magistrate Court, Jamnagar in Criminal Case No. 1672 of 2013, inter-alia, arraigning the applicant and other witnesses, as co-accused, to the alleged offences punishable under Sections 406, 420, 464, 465, 467, 471, 474, 120 (B) of the Indian Penal Code in the F.I.R. bearing C.R. No. 346/2010 registered with City 'A' Division Police Station, Jamnagar.

2. The brief facts leading to the filing of the present application read thus:

2.1. The respondent no.2 - original complainant on 30.11.2010 lodged the impugned F.I.R. being C.R. No. 346 of 2010 registered with City 'A' Division Police Station, Jamnagar against Dr. Amit Raja (husband of deceased Sapnaben and original accused no.1 in the impugned FIR) and against Arundhitiben Raja (mother-in-law of deceased and accused no.2 in the impugned FIR) for the offences punishable as stated above. The respondent no.2- original complainant in the impugned FIR R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 has alleged that the accused nos. 1 and 2 impersonated and forged the signature of the deceased in Postal Form-F and Postal Form-E and fraudulently withdraw the amount of Rs.2,00,000/- from the senior citizen saving account of deceased Jayantilal Devji Raja, wherein, deceased Sapnaben was the nominee. The said FIR being C.R. No. 346 of 2010 is duly produced at Annexure-E.

2.2. On completion of investigation, the Investigating Officer (IO) submitted charge-sheet on 14.03.2013 before the Chief Judicial Magistrate, Jamnagar against the accused nos. 1 and 2 for the aforesaid offences as stated above. Pursuant to the submissions of the charge-sheet, Criminal Case being No. 1672 of 2013 came to be registered against the accused nos. 1 and 2 and process came to be issued.

2.3. On issuance of process, the original complainant - respondent no.2 herein filed an application below Exh.7 on 05.06.2013 praying for further investigation of offence under Section 173(8) of the Code of Criminal Procedure and for arraigning the present applicant and other office bearers of the Postal Department as co-accused in the alleged offences.

2.4. The learned Magistrate by the impugned order dated 29.06.2015 allowed the application below Exh.7 filed at the instance of the respondent no.2 and by the said order, the R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 learned Magistrate directed the Superintendent of Police (S.P.) to further investigate the alleged offence against the proposed accused and submit an additional report within a stipulated time. The said order is duly produced at Annexure-I. Pursuant to the impugned order dated 29.06.2015 passed by the learned Magistrate, Jamnagar, the investigating officer filed a supplementary charge-sheet on 21.10.2015 in Criminal Case No. 1672 of 2013

arraigning the applicant and other office bearers of the postal department as co-accused to the alleged offences punishable under Sections 406, 420, 464, 465, 467, 471, 474 and 120(B) of the Indian Penal Code.

2.5. Being aggrieved by the impugned order passed by the learned Chief Judicial Magistrate, Jamnagar below Exh.7 dated 29.06.2015 and the supplementary charge-sheet dated 21.10.2015 filed by the investigating officer before the learned Magistrate, Jamnagar in Criminal Case No. 1672 of 2013, the applicant herein has preferred the present application seeking the following reliefs:

"A. That this Hon'ble Court may be pleased to quash and set aside the impugned order dated 29.06.2015 passed by the Ld. Chief Judicial Magistrate, Jamnagar below Ex.7 in Criminal Case No. 1672/2013;

B. That this Hon'ble Court may be pleased to quash and set aside the impugned Supplementary Charge-sheet dated 21.10.2015 bearing No. 68A/13, filed by the Investigation Officer before the Court of Ld. Chief Judicial Magistrate, Jamnagar, in Criminal Case No. 1672/2013;

R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 C. That pending hearing and final disposal of the present petition, this Hon'ble Court may be pleased to stay all further proceedings of Criminal Case No. 1672/2013 qua the present petitioner;

D. That this Hon'ble Court be pleased to grant an Ex- parte ad interim relief in terms of Para 6 (C);

E. That this Hon'ble Court may be pleased to award cost and special exemplary cost to the petitioner;

F. Any other and further relief as may deem fit in the interest of justice may kindly be granted."

3.1. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that the respondent no.2 had initially filed the impugned F.I.R. against the in-laws of deceased i.e. original accused nos.1 and 2 only, wherein, during the course of investigation, the investigating officer recorded the statements of the applicant and other office bearers of the postal department, who all had categorically stated that it was the deceased herself, who had visited the post-office to get her claim as nominee sanctioned, and thus, none of the witnesses had supported the allegations of the respondent no.2.

3.2. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that the respondent no.2 as a part of his modus-operandi, filed the impugned application below Exh.7 seeking to arraign all the witnesses who did not support the complaint of the respondent no.2, so that those persons can no longer testify as witnesses and damage the case of the R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 complainant, their statements becomes that of an accomplice and moreover, by arraigning such witnesses as co-accused, the complainant can put pressure upon these witnesses to depose / testify against the original accused nos.1 and 2 to serve the underlying motive of the respondent no.2 - original complainant to wreak vengeance against the original accused nos. 1 and

2.

3.3. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that the impugned order directing further investigation is passed without any basis and any material on record. The statement of the applicant and other witnesses were already recorded by the investigating officer during the investigation and pursuant thereof, the investigating officer filed charge-sheet before the concerned court against the accused nos. 1 and 2 only and not against the present applicant and other witnesses.

3.4. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that had the investigating officer found any material during the course of investigation to link the applicant with the alleged offence, the investigating officer would have arraigned the applicant and other witnesses as co-accused at the time when the first charge-sheet was filed, however, the applicant has cited witness only by the investigating officer in the first charge-sheet, which specifically shows that the investigating officer had after due application of mind and R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 considering the evidence unearthed during the course of investigation did not find any material to proceed against the applicant and hence choose not to arraign the present applicant as co-accused and had rather kept applicant as a witness only.

3.5. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that the impugned order passed by the learned Magistrate directing further investigation is based on surmises and conjunction and on mere asking by the respondent no.2 seeking further investigation and the same order is not being sustainable in the eye of law, deserves to be quashed and set aside.

3.6. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that the supplementary charge-sheet dated 21.10.2015 submitted by the investigating officer pursuant to the impugned order passed by the learned Magistrate directing the further investigation is also totally bad in law, without any basis and the investigating officer could not have arraigned the applicant as a co-accused in the alleged offence.

3.7. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that during the course of further investigation, no additional material or any kind of evidence was collected by the investigating officer, so as to suspect the applicant of having committed any offence as alleged. Merely on R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 the basis of the same set of evidence available on record while filing the first charge-sheet, the applicant herein has arraigned as co-accused in the supplementary charge-sheet for the alleged offence.

3.8. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that supplementary charge-sheet filed against the applicant is totally arbitrary, without any application of mind and merely filed on mechanical basis, the same deserves to be quashed and set aside.

3.9. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that the applicant has no role to play in the alleged offence, and the applicant is wrongly roped in the alleged offence.

3.10. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that the only role of the applicant in the aforesaid postal transaction is that of signing as a witness in Form-F submitted by the deceased before the postal department and nothing more.

3.11. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that it is not the case of the prosecution or any other witnesses that the applicant had impersonated the deceased Sapnaben or had forged the signature of deceased R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 Sapnaben and had accordingly committed an act of forgery, and hence, in absence of any such allegations, the applicant could not be said to have committed any offence as alleged.

3.12. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that after the applicant signed Form-F, there was a thorough postal investigation conducted by the PRO and thereafter, the deceased was intimated about the sanctioning of her claim and thereafter, the deceased alongwith other person had signed another Form-E to withdraw the amount from the saving accounts, wherein, admittedly, applicant was neither the witness nor the signatory, and amount which was disbursed by the postal department to the deceased by way of an account payee cheque in the name of deceased.

3.13. In view of the aforesaid submissions, Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that there is no role of the applicant in getting the amount disbursed and that there is no iota of evidence available against the applicant to rope the applicant as co-accused in the alleged offence.

3.14. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that the intentions of the respondent no.2 are mala-fide and that the respondent no.2 has filed a false and frivolous F.I.R. alleging forgery against all the accused persons of having impersonated and forged the signature of the deceased, R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 who has apparently no substance or any merits of whatsoever.

3.15. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that the impugned F.I.R. came to be lodged by the respondent no.2 is hopelessly delayed, since the entire transaction alleged to be fraudulent is completed way back in the year 2006, whereas, the impugned F.I.R. is lodged by the respondent no.2 in the year 2010 i.e. after a period of 4 years, without any justification or reasons.

3.16. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that after postal transaction was over in the year 2006, the deceased and accused no.1 got married, and thereafter, the deceased and accused no.1 were living together, and that at no point of time, the deceased made any complaint or lodged any F.I.R. alleging the aforesaid postal transaction to be forged, which specifically demonstrates an afterthought on the part of the respondent no.2.

3.17. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that deceased expired in the year 2008 and thereafter, the respondent no.2 lodged F.I.R. against the accused nos. 1 and 2 before Nerul Police Station, Mumbai and almost after a span of two years, the respondent no.2 filed

the impugned F.I.R. against the accused nos. 1 and 2, which clearly shows that the impugned F.I.R. is lodged by the respondent no.2 R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 to wreak vengeance against the accused nos. 1 and 2 and since the applicant and others officers / office bearers of the postal department did not cooperate or support the respondent no.2, the respondent no.2 also got the present applicant and other witnesses arraigned as co-accused to the alleged offence.

3.18. Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that it is an admitted position on record that the deceased never filed any complaint alleging forgery against the aforesaid postal transaction, during her entire lifetime, and the respondent no.2 was never the privy to the said postal transaction, and hence, there is no locus to the respondent no.2 to lodge the impugned F.I.R./ complaint.

3.19. In view of the aforesaid submissions, Mr. Uday Bhatt, learned counsel appearing for the applicant submitted that the applicant has been wrongly roped as a co-accused to the alleged offences, wherein, forgery is alleged in the aforesaid postal transaction, and hence, the F.I.R. and all the proceedings against the applicant herein deserves to be quashed and set aside.

3.20. Mr. Uday Bhatt, learned counsel appearing for the applicant lastly submitted that, even if the allegations of the respondent no.2 are taken as its face value, the same do not constitute any offence qua the present applicant and moreover, considering the factual background of the case, apparently the R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 respondent no.2 has lodged the impugned F.I.R. with mala-fide intention and with oblique motive, and hence, the impugned F.I.R. and supplementary charge-sheet against the applicant deserves to be quashed and set aside.

4.1. Mr. Haresh J. Trivedi, learned counsel appearing for the respondent no.2 relied on the affidavit-in-reply and submitted that the applicant herein had in collusion with the accused nos. 1 and 2 and in connivance with the officers of the postal department, in fraudulently withdrawing the amount of Rs.2,00,000/- which was in the name of senior citizen Jayantilal Devji Raja (deceased), by impersonating nominee - Sapna Gokani (deceased) by introducing a dummy female as Sapna Gokani by forging the signature of Sapna Gokani.

4.2. Mr. Haresh J. Trivedi, learned counsel appearing for the respondent no.2 submitted that the period of above offence i.e. from 04.08.2006 to 23.08.2006 at Jamnagar, at that relevant point of time, deceased Sapna Gokani was admitted at Jaslok Hospital at Mumbai and she was under treatment. Mr. Haresh J. Trivedi, learned counsel appearing for the respondent no.2 submitted that on 19.04.2008, deceased Sapna Gokani married with Amit Raja (accused no.1). After about two months of marriage, she was ill-treated, mentally and physically tortured and there was a demand of dowry from her husband - Amit Raja

- accused no.1 and Arundhati Raja - accused no.2 and it took R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 toll on deceased Sapna Gokani and on 03.08.2009 died to an unnatural death and Sessions Case No. 682 of 2012 came to be registered at Sessions Court at Thane for the offences punishable under Sections 498-A, 306, 304-B, 201, 406 r/w. Section 34 of the Indian Penal Code

and the same is pending.

4.3. Mr. Haresh J. Trivedi, learned counsel appearing for the respondent no.2 submitted that the court below rightly allowed the application filed by the respondent no.2 seeking further investigation under the provision of the Code of Criminal Procedure. Mr. Haresh J. Trivedi, learned counsel appearing for the respondent no.2 submitted that the learned Magistrate rightly came to the conclusion that the deceased Sapnaben was admitted in Jaslok Hospital at Mumbai in the year 2006, at the time when the amount was withdrawn by creating dummy person as Sapnaben, and therefore, it is an act which is illegal by all the officers, staff of post-office and officers of the bank and therefore they are rightly arraigned as co-accused in the supplementary charge-sheet. It was because of the investigating officer had failed to investigate the case, there was an order directing the Dy.S.P., Jamnagar, to investigate the case further, is within the scope of Section 173(8) of the Code of Criminal Procedure, and therefore, the impugned order being just and proper, not be interfered with.

4.4. Mr. Haresh J. Trivedi, learned counsel appearing for R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 the respondent no.2 lastly submitted that the present Application be dismissed and the hearing of Criminal Case No. 1672 of 2013 directed to be expedited.

5. Ms. Maithili D. Mehta, learned APP appearing for the respondent - State supported the submission advanced by Mr. Trivedi, learned counsel appearing for the respondent no.2 - private respondent - original complainant. Ms. Mehta, learned APP placed reliance on the deposition of Nikunjibhai Shivla and submitted that the applicant has been rightly arraigned as co-accused, and as the charge-sheet having been filed, the applicant be relegated to the statutory alternative remedy available under the law.

6. Heard Mr. Uday R. Bhatt, learned counsel appearing for the applicant, Mr. Haresh J. Trivedi, learned counsel appearing for the respondent no.2 and Ms. Maithili D. Mehta, learned APP appearing for the respondent no.1-State.

#### 7. POSITION OF LAW:

(A) In the case of Anand Kumar Mohatta V/s. State (Govt. of NCT of Delhi) reported in AIR 2019 SC 210, the relevant para reads thus:

"15. First, we would like to deal with the submission of the learned Senior Counsel for the Respondent No.2 that once the charge sheet is filed, petition for quashing of FIR is untenable.

R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 We do not see any merit in this submission, keeping in mind the position of this Court in Joseph Salvaraj A. v. State of Gujarat<sup>2</sup>. In the case of Joseph Salvaraj A. (supra), this Court while deciding the question whether the High Court could entertain the 482 petition for quashing of FIR, when the charge sheet was filed by the police during the pendency of the 482 petition, observed: -

"16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge- sheet, documents, etc. or not."

16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr. P.C and that this Court is hearing an appeal from an order under Section 482 of Cr.P.C. Section 482 of Cr.P.C reads as follows: - "482. Saving of inherent power of the High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending 2 (2011) 7 SCC 59. with the trial court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.

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18. The second submission of learned counsel for the Respondent No.2 is that the Appellant No.1 has fraudulently transferred the property which is the subject matter of the agreement dated 03.06.1993 to his wife and has thereby committed criminal breach of trust. This charge is wholly untenable and rather extraordinary since the alleged fraudulent transfer of property by the Appellant No.1 to his wife, assuming it to be illegal, by no stretch of imagination can constitute the offence of a criminal breach of trust, since the property was not entrusted by the Respondent No.2 to the Appellants. The property belonged to Appellant No.1 and there was therefore no question of Appellants having been entrusted with their own property, and that too by the complainant, who had merely entered into a development agreement in respect of the property.

21. The essence of the offence lies in the use of the property entrusted to a person by that person, in violation of any direction of law or any legal contract which he has made during the discharge of such trust. In the present case, the amount of Rs. One crore was paid by the complainant-Respondent to the Appellants as an interest free deposit on the signing of the agreement. It was liable to be refunded to the complainant simultaneously on handing over of possession of the area of the owner's share to the owner in the group housing complex vide Clause 30 (b) of the agreement dated 03.06.1993.



22. Two things are significant in the transaction between the parties. Firstly, that the occasion for returning the amount i.e. the developer handing over the possession of the area of the owner's share to the owner in the group housing complex, has not occurred. According to the Appellants, the contract stands frustrated because no group housing can be legally built on 20 Feroz Shah Road, New Delhi since it falls in the Lutyens Bungalow Zone. Appellant No.1 has therefore, terminated the contract. Further, the amount has been retained by him as a security because not only is there any handing over of constructed portion, the complainant has also got into part possession of the property and has not handed it back. Also, the complainant has failed to get the property vacated from the tenant's possession.

23. We, thus find that it is not possible to hold that the amount of Rs. One crore which was paid along with the development agreement as a deposit can be said to have been entrustment of property which has been dishonestly converted to his own use or R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 disposed of in violation of any direction of law or contract by the Appellant. The Appellants have not used the amount nor misappropriated it contrary to any direction of law or contract which prescribes how the amount has to be dealt with. Going by the agreement dated 03.06.1993, the amount has to be returned upon the handing over of the constructed area of the owner which admittedly has not been done. Most significantly the Respondent No.2 has not demanded the return of the amount at any point of time. In fact, it is the specific contention of the Respondent No.2 that he has not demanded the amount because the agreement is still in subsistence.

We do not see how it can be contended by any stretch of imagination that the Appellants have misappropriated the amount or dishonestly used the amount contrary to any law or contract. In any case, we find that the dispute has the contours of a dispute of civil nature and does not constitute a criminal offence.

25. In Indian Oil Corporation v. NEPC India Ltd. and others, this Court observed as follows: -

"13. .... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged....."

The Court noticed a growing trend in business circles to convert purely civil dispute into criminal cases.

We find it strange that the complainant has not made any attempt for the recovery of the money of Rs. One Crore except by filing this criminal complaint. This action appears to be mala fide and unsustainable.

28. It is necessary here to remember the words of this Court in State of Karnataka v. L. Muniswamy and others which read as follows: -

"7. .... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process

of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice....."

28A. We find that the prosecution is mala fide, untenable and solely intended to harass the Appellants. We are forfeited in view of the Respondent not having made any attempt to recover the deposit of Rs. One Crore through a civil action.

29. We have, therefore, no hesitation in quashing the FIR and the charge sheet filed against the Appellants. Hence, the FIR No.0139/2014 dated 20.08.2014 and charge sheet dated 03.08.2018 are hereby quashed.

30. For the aforesaid reasons, we hereby set aside the impugned judgment and order dated 02.02.2016 of High Court of Delhi. Accordingly, appeal is allowed along with the application filed by the Appellants seeking amendment of main prayer."

(B) In the case of Vijaykumar Ghai and others v/s. State of West Bengal and others reported in (2022) 7 SCC 124, the relevant para reads thus:

"27. Section 405 of IPC defines Criminal Breach of Trust which reads as under: -

"405. Criminal breach of trust.--Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

The essential ingredients of the offense of criminal breach of trust are:-

R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 (1) The accused must be entrusted with the property or with dominion over it, (2) The person so entrusted must use that property, or; (3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,

(a) of any direction of law prescribing the mode in which such trust is to be discharged, or;

(b) of any legal contract made touching the discharge of such trust.

28. "Entrustment" of property under Section 405 of the Indian Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, 'in any manner entrusted with property'. So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of 'trust'. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.

29. The definition in the section does not restrict the property to movables or immoveable alone. This Court in *R K Dalmia vs Delhi Administration*<sup>22</sup> held that the word 'property' is used in the Code in a much wider sense than the expression 'moveable property'. There is no good reason to restrict the meaning of the word 'property' to moveable property only when it is used without any qualification in Section 405.

30. In *Sudhir Shantilal Mehta Vs. CBI*<sup>23</sup> it was observed that the act of criminal breach of trust would, *Inter alia* mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust.

31. Section 415 of IPC define cheating which reads as under: - "415. Cheating. --Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

The essential ingredients of the offense of cheating are:

1. Deception of any person

2. (a) Fraudulently or dishonestly inducing that person-

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

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

32. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

33. Section 420 IPC defines cheating and dishonestly inducing delivery of property which reads as under: -

"420. Cheating and dishonestly inducing delivery of property.

--Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

34. Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.

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36. To establish the offence of Cheating in inducing the delivery of property, the following ingredients need to be proved:-

1. The representation made by the person was false
2. The accused had prior knowledge that the representation he made was false.
3. The accused made false representation with dishonest intention in order to deceive the person to whom it was made.
4. The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

37. As observed and held by this Court in the case of Prof. R.K. Vijayasarathy & Anr. Vs. Sudha Seetharam & Anr. 24 , the ingredients to constitute an offence under Section 420 are as follows:-

i) a person must commit the offence of cheating under Section 415;

and

ii) the person cheated must be dishonestly induced to;

a) deliver property to any person; or

b) make, alter or destroy valuable security or anything signed or 24 (2019) 16 SCC 739 sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC."

(C) In the case of Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and Ors. reported in (2017) 9 SCC 641, the relevant para read thus:

"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

16.2. The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power; 16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court; 16.5. The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute; 16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and 16.10. There is yet an exception to the principle set out in propositions 16.8 and 16.9 above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

(D) In the case of State of Haryana and Others v/s. Bhajan Lal and others reported in 1992 Supp. (1) SCC 335, the relevant para reads thus:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter-XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

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(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police

officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. At this stage it is apposite to refer to the following Sections of the Indian Penal Code:

8.1. Section 405 of the Indian Penal Code:

"405. Criminal breach of trust.--Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

8.2. Section 406 of the Indian Penal Code:

"406. Punishment for criminal breach of trust.--Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

8.3. Section 420 of the Indian Penal Code:

"420. Cheating and dishonestly inducing delivery of property.

--Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being

converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

#### 8.4. Section 464 of the Indian Penal Code:

"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 [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature], with the intention of causing it to be believed that such document or part of document, electronic record or 342 [electronic 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 R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; 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 [electronic 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.]"

#### 8.5. Section 465 of the Indian Penal Code:

"465. Punishment for forgery.--Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

#### 8.6. Section 467 of the Indian Penal Code:

"467. Forgery of valuable security, will, etc.--Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be



punished with 1[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."

8.7. Section 471 of the Indian Penal Code:

"471. Using as genuine a forged 1[document or electronic record].--Whoever fraudulently or dishonestly uses as genuine any 1[document or electronic record] which he knows or has reason to believe to be a forged 1[document or electronic record], shall be punished in the same manner as if he had forged such 1[document or electronic record].

8.8. Section 474 of the Indian Penal Code:

R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 "474. Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine.--1[Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code], be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with 2[imprisonment for life], or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine."

8.9. Section 120 B of the Indian Penal Code:

"120B. Punishment of criminal conspiracy.-- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]"

9. The undisputed facts that emerge for consideration of this Court are that, originally one deceased Jayantilal Devji Raja, opened a senior citizen saving account, with Jamnagar Post Office, bearing Account No. 4190050 ('saving account' for short) on 14.01.2006, wherein, deceased Jayantilal Devji Raja appointed his future grand daughter-in-law (i.e. fiancée of his grand son) Ms. Sapna P. Gokani ('deceased' for short) as his nominee. The copy of the Form-A submitted by the deceased for opening account is duly produced at Annexure-A.

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10. Jayantilal Devji Raja expired on 05.06.2006 and pursuant thereto, deceased Sapnaben being the nominee of the aforesaid saving account of deceased Jayantilal Devji Raja, submitted 'Postal Form-F' dated 04.08.2006 before the Postal Department for closure of the aforesaid saving account of the deceased Jayantilal Devji Raja. The said Form-F submitted by the deceased before the Postal Department for closure of the saving account of deceased Jayantilal Devji Raja, the applicant herein alongwith one Nitin Keshavlal Nanda also signed the aforesaid Form-F as witnesses in presence of the Postal Officer. The said Form-F dated 04.08.2006 submitted by the deceased Sapnaben for closing account before the Postal Department is duly produced at Annexure-B, which is the form in question.

11. It is stated that pursuant to the submission of the aforesaid Form by the deceased before the Postal Department for account closure, the procedure as required by the postal department was undertaken. After being satisfied with the genuineness of the claim and identity of the deceased, the said Form-F was forwarded with positive endorsement to the head office. The postal department, upon receipt of the positive endorsement from the PRO, issued the sanctioned letter to deceased vide a Registered Post A.D. on 18.08.2006. Upon receipt of the aforesaid sanction letter by the deceased, the deceased alongwith her father-in-law, viz. Virendra Raja had personally R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 visited the post office on 23.08.2006, wherein, deceased had signed Form-E, in presence of the Postal Officer- Ms. Zarinaben, and the said Form-E was further witnessed and signed by Mr. Virendra Raja.

12. That deceased Sapnaben (nominee of deceased Jayantilal Devji Raja) got married with accused no.1 - Dr. Amit Raja on 19.04.2008 at Mumbai. It appears that on 03.08.2009, Sapnaben expired and the respondent no.2 herein lodged a Criminal Complaint bearing No. 220 of 2009 before Nerul Police Station, Mumbai against the accused no.1 - Dr. Amit Raja and accused no.2 - Arundhitiben Raja.

13. The respondent no.2 on 30.11.2010 i.e. after the period of four years, after sanctioning of the aforesaid claim of the deceased by the postal department, lodged the impugned F.I.R. being C.R. No. 346 of 2010 before the City A Police Station, Jamnagar for the offences punishable under Sections 406, 420, 464, 465, 467, 471, 474 and 120(B) of the Indian Penal Code against the accused nos. 1 and 2. The investigation came to be conducted against the accused nos. 1 and 2 and statements of the applicant and other office bearers of the postal department i.e. (I) Mukund Shivilal Dandha (Public Relation Officer in postal Department), (II) Zarinaben Zaver (Postal Assistant Clerk); and (III) Savji Laxman Joval (Postal Head Clerk), were recorded.

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14. The applicant alongwith the above witnesses specifically stated in their statements that the deceased Sapnaben had personally visited the post-office for getting her claim sanctioned, and that the deceased herself had specifically signed all the relevant documents in the post-office in presence of the postal officers. Upon perusal of the statement of the witnesses, it is evident that none of the

witnesses supported the case of complainant. The said statements are duly produced from page-20 to 28. On completion of investigation, the investigating officer submitted a charge-sheet on 14.03.2012 before the learned Chief Judicial Magistrate, Jamnagar against the accused nos. 1 and 2 and on submission of the aforesaid charge-sheet by the investigating officer, the learned Magistrate registered the Criminal Case No. 1672 of 2013 against the accused nos. 1 and 2 and issued process against the said accused persons.

15. The respondent no.2 filed an application below Exh.7 on 05.06.2013 under Section 173(8) of the Code of Criminal Procedure praying for further investigation and arraigned the applicant and other office bearers of the postal department, as accused. The learned Magistrate by the impugned order dated 29.06.2015 allowed the application below Exh.7 and directed that an additional report be filed. The investigating officer filed supplementary charge-sheet on 21.10.2015 arraigned the applicant and other office bearers of the postal department as co-accused to the alleged offences punishable under Sections 406, 420, 464, R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 465, 467, 471, 474 and 120(B) of the Indian Penal Code.

16. In view of this Court, the aforesaid provisions are not attracted qua the present applicant, in view of the following:

(a) The essential ingredients of the offense of criminal breach of trust are:-

(1) The accused must be entrusted with the property or with dominion over it, (2) The person so entrusted must use that property, or; (3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,

(a) of any direction of law prescribing the mode in which such trust is to be discharged, or;

(b) of any legal contract made touching the discharge of such trust.

The applicant herein signed in Form-F as a witness in presence of the postal officer. The said Form-F dated 04.08.2006 was submitted by deceased Sapnaben for closing the account before the postal department. The essential ingredient for offence of criminal breach of trust as discussed above by the Hon'ble Supreme Court in Vijaykumar Ghai (supra), in view of this Court, would not be attributed to the applicant herein for the reasons stated above.

(b) The essential ingredients of the offense of cheating are:

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1. Deception of any person

2. (a) Fraudulently or dishonestly inducing that person-

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

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

Section 420 of the Indian Penal Code is a serious form of cheating which includes inducement (to lead or move someone to happen) in terms of delivery of property movable or immovable as well as valuable securities. In the facts of the present case, inducement is not attributable to the present applicant, in view of the fact that the amount in question was transferred by the postal department in the account of deceased Sapnaben i.e. in Union Bank of India, Jamnagar as back as on 07.09.2006 bearing Cheque No. Q 0170988. In her lifetime, deceased Sapnaben never initiated any proceedings or alleged impersonation.

(c) The essential elements of the offense of forgery are:

The basic elements of forgery are: (i) the making of a false document or part of it and (ii) such making should be with such intention as is specified in the section, viz. (a) to cause damage or injury to (I) the public, or (ii) any person; or (b) to support any claim or title; or (c) to cause any person to part with R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 property; or (d) to cause any person to enter into an express or implied contract; or (e) to commit fraud or that fraud may be committed.

The impugned F.I.R. is filed by the father of deceased Sapnaben- complainant - respondent no.2, for the alleged offences which occurred in the year 2006, for an amount, which was deposited in the account of deceased Sapnaben herself and in her lifetime, deceased Sapnaben had never complained with regard to the impersonation or forgery in her lifetime and further the complaint has been filed in the year 2010 by the complainant i.e. father of Sapnaben after she expired in the year 2009.

(d) For the charge under Section 120-B of the Indian Penal Code, following ingredients are required:

(i) An agreement between two or more persons.

(ii) The agreement should be or the cause should be done by illegal act or some act which is not illegal by illegal means, provided that where the agreement is other than the one to commit an offence and

(iii) that some act beside the agreement was done by one or more parties in pursuance of it.

Clearly, in the facts of the present case, the applicant herein cannot be said to have any unlawful gain or any collusion R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 or criminal

conspiracy, as to have been hatched between the applicant and other accused.

For the aforesaid reasons, the applicant herein cannot be attributed with the alleged offences under the provisions of Sections 406, 420, 464, 465, 467, 471, 474, 120 (B) of the Indian Penal Code. More particularly, it is not the case of the prosecution also that the applicant herein has forged the document in question.

17. From the aforesaid, it clearly transpires that the respondent authority has arraigned the applicant and other office bearers of the postal department as accused in the impugned complaint, without there being any new material on record. It appears that in absence of any new material on record and in view of the fact, all the statements which are produced on record, which have been relied upon by the prosecution were taken at the time of investigation. No other material is placed on record to arraign the applicant as co-accused, apart from the above statements. Further, the charge-sheet came to be filed by the prosecution only against the accused nos. 1 and 2 and only after the concerned Court allowed the application preferred by the present respondent no.2 under Section 173(8) of the Code of Criminal Procedure permitting further investigation qua the present applicant and other co-accused, the name of the present applicant and other persons came to be arraigned as co-accused R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 in the supplementary charge-sheet dated 21.10.2015 bearing No. 68A/13, without any new material on record. The Form-F, which is in question, wherein, the applicant has signed as a witness was placed before the higher officer of the postal department, after having been satisfied with the genuineness of the claim and identity of deceased Sapnaben. The said form was forwarded with the positive endorsement to the head-office. The sanctioned letter came to be issued to the deceased Sapnaben by Registered Post on 18.08.2006, which was also on record and duly produced at Annexure-C. Pursuant to the said sanctioned letter, the deceased Sapnaben alongwith her father-in-law - Virendra Raja had personally visited the post-office on 23.08.2006, wherein, the said Form-E was signed in presence of the postal office - Ms. Zarinaben and was also further witnessed and signed by father-in-law of Sapnaben (deceased), viz. Virendra Raja.

18. The Postal Department issued an Account Payee cheque bearing Cheque No. Q 0170988 in favour of deceased Sapna P. Gokani and took the counter endorsement and acknowledgment from the deceased pertaining to the receipt of the said cheque on Form-E. The aforesaid cheque as stated above, was deposited by the deceased in her Union Bank of India Account No. 8249, which was duly credited in her account. Copy of the pay slip is duly produced at Annexure-D-1. It is also pertinent to note that the claim of deceased Jayantilal Raja was thoroughly processed and verified by the postal department in R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 accordance with the rules and regulations of the postal department. The entire procedure came to be concluded by the postal department on 23.08.2006. Sapnaben appears to have expired on 03.08.2009. Though, while she was alive, no complaint came to be filed by Sapnaben with regard to the aforesaid dispute in question. It was only in 2010 that the respondent no.2 filed the impugned complaint against the accused nos. 1 and 2. Further, the prosecution was unable to place on record any material apart from the aforesaid statements on the basis of which, the applicant and others have been arraigned as co-accused in the supplementary charge-sheet.

19. For the foregoing reasons, it can easily be inferred that the allegations levelled against the applicant, charging the applicant with the aforesaid provisions, in view of this Court do not inspire any confidence. The applicant is arraigned as an accused in absence of any material on record. Merely an allegation of impersonation of Sapnaben (deceased) cannot be a reason to arraign the applicant as an accused, and more particularly, in view of the fact that, Sapnaben in her lifetime never complained of whatsoever nature, her signature and photographs were matched and if at all there is an impersonation, the applicant could not have any mens-rea, since the amount of account payee cheque was deposited in the account of Sapnaben's bank account. The entire chain of events suggest that it was probable a dispute between deceased R/SCR.A/1658/2017 JUDGMENT DATED: 29/09/2022 Sapnaben and her husband and her mother-in-law at the most. The applicant has signed merely as a witness in the form and he was an employee of the postal department, he was asked that the applicant was required to sign as a witness in Form-F, in presence of Sapnaben's father-in-law- Virendra Raja.

20. In view of the aforesaid peculiar facts and circumstances of the present case, this Court is inclined to exercise extraordinary jurisdiction by quashing the Supplementary Charge-sheet dated 21.10.2015 bearing No. 68A/13 submitted by the investigating officer before the learned Chief Judicial Magistrate Court, Jamnagar arraigning the applicant as co- accused, qua the present applicant. Accordingly, Criminal Case No. 1672 of 2013 stands terminated qua the present applicant. The Criminal Case be continued qua rest of the accused persons. Rule is made absolute. Direct service is permitted.

(VAIBHAVI D. NANAVATI,J) Pradhyuman