

Chetan Champakkumar Patel vs State Of Gujarat on 27 April, 2023

Author: Gita Gopi

Bench: Gita Gopi

R/CR.MA/28312/2017

JUDGMENT DATED: 27/04/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 28312 of 2017

With

R/SPECIAL CRIMINAL APPLICATION NO. 679 of 2018

With

R/SPECIAL CRIMINAL APPLICATION NO. 6429 of 2017

With

CRIMINAL MISC.APPLICATION (DIRECTION) NO. 1 of 2018

In

R/SPECIAL CRIMINAL APPLICATION NO. 6429 of 2017

With

R/SPECIAL CRIMINAL APPLICATION NO. 6477 of 2017

With

R/CRIMINAL MISC.APPLICATION NO. 6396 of 2017

With

R/CRIMINAL MISC.APPLICATION NO. 21418 of 2017

With

R/CRIMINAL MISC.APPLICATION NO. 21767 of 2017

With

With

R/CRIMINAL MISC.APPLICATION NO. 25279 of 2017

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R/CR.MA/28312/2017

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FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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CHETAN CHAMPAKKUMAR PATEL

Versus

STATE OF GUJARAT & 1 other(s)

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Appearance in CRMA No.28312 of 2017:

MR YATIN N.OZA, SENIOR COUNSEL WITH MR APURVA R
KAPADIA(5012) for the Applicant(s) No. 1

MR B.S. RAJU ADVOCATE WITH MR AKASH A SINGH(8713) for the
Respondent(s) No. 2

MR PRANAV TRIVEDI ADDITIONAL PUBLIC PROSECUTOR for the
Respondent(s) No. 1

Appearance in SCRA No.679 of 2018:

MR AMIT V THAKKAR for the Applicant(s) No. 1-3

NOTICE SERVED BY DS for the Applicant(s) No.2-3, 5

MR PRANAV TRIVEDI ADDITIONAL PUBLIC PROSECUTOR for the

Respondent(s) No. 1

MR SAMTA R.GODIWALA for Respondent(s) No.4

Appearance in SCRA No.6429 of 2017:

MR YATIN N.OZA, SENIOR COUNSEL WITH MR APURVA R

KAPADIA(5012) for the Applicant(s) No. 1

MR PRANAV TRIVEDI ADDITIONAL PUBLIC PROSECUTOR for the

Respondent(s) No. 1

RULE SERVED BY DS for Respondent(s) No.2-3

MR B.S. RAJU ADVOCATE WITH MR AKASH A SINGH(8713) for the

Respondent(s) No.4

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Appearance in CRMA NO.1 OF 2018 IN SCRA No.6429 of 2017:

MR YATIN N.OZA, SENIOR COUNSEL WITH MR APURVA R

KAPADIA(5012) for the Applicant(s) No. 1

MR PRANAV TRIVEDI ADDITIONAL PUBLIC PROSECUTOR for the

Respondent(s) No. 2

MR SAMTA R GODIWALA for the Respondent(s) No.3

Appearance in SCRA No.6477 of 2017:

MR NIRAD DBUCH for the Applicant(s) No. 1

MR PRANAV TRIVEDI ADDITIONAL PUBLIC PROSECUTOR for the

Respondent(s) No. 1

MR B.S. RAJU ADVOCATE WITH MR AKASH A SINGH(8713) for the

Respondent(s) No.2

Appearance in CRMA No.6396 of 2017:

MR ASHISH B DESAI for the Applicant(s) No. 1

MR PRANAV TRIVEDI ADDITIONAL PUBLIC PROSECUTOR for the

Respondent(s) No. 1

MR N M KAPADIA for the Respondent(s) No.2

Appearance in CRMA No.21418 of 2017:

MR NIRAD D BUCH) for the Applicant(s) No. 1

MR PRANAV TRIVEDI ADDITIONAL PUBLIC PROSECUTOR for the

Respondent(s) No. 1

MR B.S. RAJU ADVOCATE WITH MR AKASH A SINGH(8713) for the

Respondent(s) No.2

Appearance in CRMA No.21767 of 2017:

MR YATIN N.OZA, SENIOR COUNSEL WITH MR APURVA R

KAPADIA(5012) for the Applicant(s) No. 1-3

MR PRANAV TRIVEDI ADDITIONAL PUBLIC PROSECUTOR for the

Respondent(s) No. 1

MR B.S. RAJU ADVOCATE WITH MR AKASH A SINGH(8713) for the
Respondent(s) No.2

Appearance in CRMA No.25082 of 2017:

MR PRAVIN GONDALIYA for the Applicant(s) No. 1

MR PRANAV TRIVEDI ADDITIONAL PUBLIC PROSECUTOR for the
Respondent(s) No. 1

MR B.S. RAJU ADVOCATE WITH MR AKASH A SINGH(8713) for the
Respondent(s) No.4

Appearance in CRMA No.25279 of 2017:

MR HARDIK A. DAVE for the Applicant(s) No. 1-3

MR PRANAV TRIVEDI ADDITIONAL PUBLIC PROSECUTOR for the
Respondent(s) No. 1

MR B.S. RAJU ADVOCATE WITH MR AKASH A SINGH(8713) for the

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Respondent(s) No.2

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 27/04/2023

COMMON ORAL JUDGMENT

1. Common issue has arisen in all the captioned matters, by consent of the parties, the matters were heard finally and are being disposed of by this common judgment.

2. Petitions being Criminal Misc. Application No.28312 of 2017, Special Criminal Application Nos.6429 of 2017, 6477 of 2017, Criminal Misc. Application Nos.21418 of 2017, 21767 of 2017, 25082 of 2017 and 25279 of 2017, have been filed under under section 482 of the Code of Criminal Procedure for quashing and setting aside the FIR bearing C.R. No.I-215/2017 registered before the Umra Police Station, Surat City under sections 406, 420, 465, 467, 468, 471, 120B and 114 of IPC R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 2.1 Whereas Criminal Misc. Application No.6396 of 2017 is filed for quashing of FIR bearing C.R. No.I- 45/2016 registered with Umra Police Station, Surat under sections 447, 114 and 188 of IPC.

2.2 While Special Criminal Application No.679 of 2018 is for quashing and setting aside the impugned order dated 08.01.2018 passed below Exhibit-34 in Criminal Misc. Application No.3360 of 2015 by the 2 nd Additional Sessions Judge, Surat, and, for direction to the police authorities, being respondent nos.2 and 3, for handing over possession of the subject land to the petitioners.

3. As per the complainant, to the facts noted in the complaint, Revenue Survey No.209 of village-Vesu with new Survey No.111/3 land being old tenure, area admeasuring 9814 sq. mtrs., the original owner is Homi Janhagirji Vesuna, and as per the complainant the said land was in possession and occupation of the original R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 owner, since the complainant also holds a land in the outskirts of village Vesu and conducts agricultural activities; he came in contact with Homi Jahangirji Vesuna, who informed him in the year 1997, that he wanted to sell his land, the complainant, thus expressed his willingness, therefore, it is stated that complainant purchased the said land in the year 1997, in the name of his wife Shardaben and son Anup, and a registered Satakhat without possession was executed on 22.10.1997 by the owner of the land, Homi Jahangirji Vesuna. 3.1 The applicants while praying for the quashing of FIR contended that the father of accused no.5 of F.I.R. being C.R. No.I-215/2017, Darbsha @ Dali Faramji Patel was in possession of the subject land as a tenant prior to 1955, and after his demise, accused no.5 - Minu Darbsha and his brother accused nos.4 - Firoz Darabsha @ Dali Patel and accused no.6 - Yasmin wd/o. Hosang Darabsha @ Dali Patel were cultivating and in possession of the land. The applicants contends that the original owner - R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Homi Janhagirji Vesuna and father of accused nos.4 & 5, being of the same community, had cordial relations and had mutual trust on each other and therefore original owner agreed to sell the subject land to the father of accused nos.4 & 5, for which an agreement was executed on 08.03.1986., which acknowledges the possession of Darbsha @ Dali Patel. After the demise of father of accused nos.4 & 5 on 13.03.1997, the dispute arose between the parties and accused no.5 and his brothers initiated tenancy proceedings in the year 2000, which reached till Gujarat Revenue Tribunal, and, the Gujarat Revenue Tribunal by order dated 30.09.2005 in Revision Application No.TEN/BS/42/2002 remanded the same to the Mamlatdar for deciding the matter afresh, and, till date the said issue is pending before the Mamlatdar, Krushi Panch, Ganot, Choryasi.

3.2 It is alleged in the F.I.R. C.R. No.I-215/2017 by the complainant - Surendrakumar Ishwarlal Tamkhidas that, he had purchased the land bearing Revenue Survey R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 No.209, new revenue Survey No.111/3 of village-Vesu, Taluka-City, Surat, admeasuring 9814 sq. mtrs. from the original land owner - Homi Jahangirji Vesuna for the sale consideration of Rs.2,15,000/-, and account payee cheque, being Cheque Nos.0579361 and 0579362 for Rs.1,00,000/- was paid of Surat District Co-operative Bank Ltd., and rest of the amount, as stated by the complainant that, he has paid in cash, and to that effect, complainant was having registered 'Satakhat' - agreement of sale without possession dated 22.10.1997 in his favour, executed by Homi Jahangirji Vesuna, Roshan Homi Vesuna and Feniben D/o. Jahangirji Kavashji before sub-registrar office at Sr. No.15103/1997. Further, and on the very same day a receipt was executed on Rs.20/- stamp, handing over the possession of the land. 3.3 It is also stated in the FIR that along with the said Satakhat, Irrevocable Power of Attorney was given to the complainant, and on the basis of the Power of Attorney, the complainant before the

Sub-Registrar, Surat R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 City-1 at Serial No.2230/2002 executed registered sale deed in favour of his wife and son on 30.03.2002, who became the owner in possession of land. It is also stated that in the revenue proceedings, the complainant succeeded, upto the Special Secretary and the Satakhat which is stated to be executed by the original land owner in favour of father of accused no.5 in the year 1986 is fake, the signature of the land owner is forged, which is supported by handwriting expert opinion of Mr. Upadhyaya on 19.09.2012. It is further alleged in the complaint, that though accused nos.8 to 10, were not entitled to sell the land, they had executed one Power of Attorney, and, agreement to sell, dated 05.11.2012, for which accused no.3 - Amit Patel gave Rs.30,00,000/- to the accused nos.8 to 10.

3.4 As per the complaint, before the Mamlatdar and Agricultural Tribunal, in the case instituted on 23.06.2000 as Tenancy Case No.47/2000, the learned Agricultural Mamlatdar rejected the application on R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 30.05.2001, so the complainant states that decision had come in their favour, since the name of his wife and son was in revenue record as Entry No.2839. It is stated by the complainant, that Meenu Darabshah @ Dali Patel and Others filed RTS Appeal No.44/2002, the Mamlatdar rejected the application and the Entry No.2839 was confirmed.

3.5 Thereafter, Meenu Darabshah @ Dali Patel and Others filed a Special Civil Suit No.316/2002, and, since no evidence was produced, it is stated that, on 04.07.2011, the plaint was rejected, while against the order of the Agricultural Mamlatdar, an appeal No.143/2003 was filed before the Deputy Collector and on 17.09.2004, the appeal came to be dismissed. Thereafter, Meenu Darabshah @ Dali Patel and others filed an RTS Appeal No.93/2004, that too, came to be rejected by the Collector and against that order appeal was preferred before Special Secretary, Revenue Department, Ahmedabad, which also was rejected on 14.03.2016, and R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 the name of his wife and son got confirmed. 3.6 The allegation, which has been made by the complainant against the accused is that, Meenu Darabshah @ Dali Patel and other, in order to usurp the right of the complainant on the land, in Special Civil Suit No.316/2002, they, by using a stamp of the year 1986, created a bogus and forged agreement of sale, and, used the same in the Suit. The Satakhat was shown to have been executed in the favour of Darabshah @ Dali Patel Karamji Patel, by Homi Jahangir Vesuna. It is alleged by the complainant that prior to the suit, in all the revenue proceedings before the Mamlatdar, Deputy Mamlatdar Prant, Collector and Special Secretary, this alleged bogus agreement of sale of the year 1986, was never produced, further the land owner, Homi Jahangirji Vesuna by executing an affidavit 04.04.2012 had affirmed on oath of Sathakhat 1986, being false. In the said Sathakhat, the witnesses shown were Firoz Gustadji Patel and Jayanti Balu Ahir, and when enquired from both, they have R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 denied of any such signature. Firoz Gustadji Patel informed that he was not knowing 'Gujarati' language and was also not aware of any such Satakhat of 1986. The original owner Homi Jahanjir Vesuna had got the document examined by a private handwriting expert Shri U.V. Upadhyaya, who expressed his opinion on 19.02.2012, of the signature being false and bogus. 3.7 It is noted in the F.I.R. that thereafter Firoz Darabshah @ Dali Patel - accused no.4, Meenu Darabshah @ Dali Patel - accused no.5, Yasmin Hosang Patel - accused no.6 and Porus Hosang Patel - accused no.7, contacted Manharbhai Muljibhai Kakadiya and in concert, planned to usurp the land of the complainant. The complainant, in that connection, had filed proceedings

under section 145 Cr.P.C., and the preliminary order was passed in favour of the complainant and thereafter since Firoz Darabshah @ Dali Patel and others had challenged the same before the High Court, the possession of the said land was given to Surat R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Police Commissioner by the High Court, and, thus, as stated by the complainant, at present the land is in the possession of the Police Commissioner, Surat. 3.8 The complainant further alleges in the F.I.R. that when he inquired from the Sub-Registrar office at Surat, he came to know that for the land of his ownership, Meenu Darabshah @ Dali Patel, Firoz Darabshah @ Dali Patel, Yasmin Hosang Patel and Porus Hosang Patel had given to Dhaval Balubhai Golkiya - accused no.2 on 22.08.2012, a Power of Attorney produced at Sr. No.12552, registered at Sub-Registrar Office, Athwa Office at Sr. No.2416/13. The complainant alleges that the persons, who had given the power, were in knowledge of the fact that they were not the land owner; in spite of that, bogus general power of attorney had been executed, Sitesh Jain - accused no.1 has signed as a witness to the said power of attorney.

3.9 It is alleged that in the same way on 05.11.2012, when general power of attorney was R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 executed by Maharukh, daughter of Darabshah @ Dali Patel and wife of Firoz Patel, Delphi Rehan Khandwani daughter of Firoz Patel and Paniz Firoz Patel (Accused Nos.8, 9 and 10) in favour of Amitkumar Rameshbhai Patel - accused no.3; they were knowing that they were not the owner of the land, and, on the very same day agreement to sell (Sathakhat) was made in favour of Amitkumar Rameshbhai Patel (accused no.3). The Power of Attorney was notarized and the Sathakhat was executed before the Sub-registrar office at Sr. No.131/2012, and sale consideration was decided as Rs.52,00,000/- and part amount of Rs.30,00,000/- was received from Amitkumar Rameshbhai Patel. 3.10 The complainant states that for the proceedings under section 145 Cr.P.C., by an order of the High Court on 14.04.2012 in Special Civil Application No.1506 of 2012, the possession of the land was ordered to be handed over to the Police Commissioner, Surat, and, thereafter on 16.06.2017, it is stated that, Meenu R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Darabshah and his associates had tried to illegally trespass the land, and, thus had informed the police, and against Meenu Darabshah and others C.R. No.I-45/2016 under section 447 of the IPC and invoking other sections was registered, when the complainant visited the land, he was informed by Sitesh Jain (accused no.1) that he was Manager of Manharbhai Muljibhai Kakadiya, and under his instruction, he had come along with Meenu Darabshah.

3.11 As per the complainant, the bogus Power of Attorney is in the name of Dhaval Balubhai Golkiya, who is a person serving with a known builder of Surat City, named Manharbhai Muljibhai Kakadiya, which could be verified from the sale-deeds executed under the project of 'Ashirwad Residency', and those sale-deeds executed by Manhar Kakadiya himself and Dhaval Balubhai Golkiya, as Power of Attorney holder and even as Power of Attorney holder of 'Ashirwad Residency'. The complainant, therefore, had given an application on R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 27.03.2017 before the Police Commissioner, and in C.R.M.A. No.5160 of 2017, he has received a consent from Police Commissioner, Zone-2 to file a complaint. After the investigation, thus, filed a complaint against all.

4. Senior Advocate Mr. Yatin Oza along with Advocate Mr. Apurva R.Kapadia for the applicants submitted that for the Special Civil Suit, which came to be dismissed for want of prosecution on 04.07.2011, the plaintiffs moved a Restoration Application No.49 of 2012 with an application for condonation of delay of 76 days, which was allowed. The High Court dismissed Special Civil Application No.5896 of 2012, preferred by the complainant challenging the order of the trial Court, condoning the delay, on 24.04.2012. The learned trial Court allowed the Restoration Application No.49 of 2012 filed by accused no.5 on 12.09.2014. Against that, the complainant had preferred Special Civil Application No.15764 of 2014, which also was dismissed by this Court on 01.08.2017. Thus, senior Advocate Mr. Oza stated that the Civil Suit No.316/2002 was restored, which was filed R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 by Meenu Darabshah @ Dali Patel - accused no.5 and his family members, challenging the deeds executed by the complainant in favour of wife his and son. The Suit is for specific performance of unregistered agreement of sale with possession dated 08.06.1986, and for declaration and injunction.

4.1 Mr. Oza, senior advocate, stated that the injunction application - Exhibit-5 was moved and the defendants preferred a counter injunction application at Exh.62, the Court Commissioner submitted his report dated 30.07.2002, which reflects the possession of the plaintiffs i.e. accused no.5 and his family. A common written statement was filed by the defendants, the original owner - Homi Jahangir Vesuna and the complainant asserting, that the agreement to sell dated 08.03.1986 was forged and fabricated. Mr. Oza stated that an application was filed by the complainant seeking inspection of the original Satakhath on 05.09.2002, which was inspected by the complainant and the application was R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 disposed of on 03.02.2005.

4.2 Mr. Oza, senior advocate, stated that Exhibit-5 of the plaintiffs i.e. accused no.5 and his family members was partly allowed; while Exhibit-62 of the defendants i.e. complainant and others was rejected, and both parties were directed to maintain status quo of the suit property till the final disposal of the Suit. The trial Court found prima facie case of the plaintiff, and has believed the agreement of sale looking to the documents, with letters dated 01.02.1986 and 22.01.1985, as of executed in favour of father of the plaintiffs, on defendant no.1 having accepted the earnest money. Mr. Oza submitted that it has been further observed in the order, that "looking to the revenue record and looking the order of Tenancy Case No.47/2000 and Tenancy Appeal No.47/2001, the plaintiffs may be in possession of the suit land", on the defendants' claim for possession on the land as a owner, but on considering the documents, it was observed "that the plaintiffs may be in possession of the suit land." Mr. R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Oza stated that adjoining farm owner has also executed affidavit in support of accused no.5, which forms part of the documents produced before the Civil Court, and, the possession of the accused no.5 and his family members since decades is well established.

4.3 Senior Advocate Mr. Oza, thus, stated that there were postal communication between the original owner and the father of the accused nos.4 and 5 at the relevant time, about the original Satakhath dated 08.03.1986, which proves that agreement of sale with possession of the land was executed. It is further stated that the original owner Homi Jahangirji Vesuna has never filed any F.I.R., while agreement to sell, stated to be executed by Homi Jahangirji Vesuna is without

possession in favour of the wife and the son of the complainant on acceptance of Rs.1,00,000/- by cheque dated 22.10.1997 and on the very same day, Homi Jahangirji Vesuna has executed a Power of Attorney in favour of the first informant, who thereafter sold the land in favour of his R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 wife and son by registered sale-deed dated 30.03.2002, and on knowing about the sale deed, Meenu Darabshah - accused no.5 and his family preferred Special Civil Suit No.316 of 2002, challenging the sale deed in favour of the wife and son of the first informant, with a prayer for specific performance of agreement to sell with possession dated 08.05.1986, where on the basis of the Court Commissioner's report and the letter communication dated 01.02.1986 and 22.01.1985 and on the basis of the original Satakhata of 08.03.1986, the learned trial Court in Civil Suit has believed the possession of the plaintiffs, who are accused in the matter.

4.4 Senior Advocate Mr. Oza, thus, stated that any opinion by a private handwriting expert would certainly be in favour of the person, who would pay the fees to seek the opinion.

4.5 Relying on the observations of High Court of Kerala at Ernakulam in a case of R.G. Harilal, S/o R.Gopinathan, Vs. Joint Registrar of Co-operative R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Societies (General) & Ors., in WA. No.2414 of 2018, decided on 13.12.2018, Senior Advocate Mr. Oza submitted that any expert opinion on laminated documents would bear no value, and, thus should be considered as invalid. Mr. Oza by relying on the judgment of Rajeshbhai Muljibhai Patel Vs. State of Gujarat, reported in (2020) 3 SCC 794, stated that when the issue as to the genuineness of the document is pending consideration in a Civil Suit, the F.I.R. need not be allowed to continue, as it would prejudice the interest of the parties, and the stand taken by them in Civil Suit. 4.6 Senior Advocate Mr. Oza stated that section 45 of the Indian Evidence Act, though considers the opinion of the handwriting expert as relevant piece of evidence, but is not conclusive, and is always open to the parties to adduce appropriate evidence to disprove the opinion of the handwriting expert and for that purpose section 73 of the Indian Evidence Act, empowers the Court to form its opinion.

R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 4.7 To the arguments of Advocate Mr. B.S. Raju, alleging agreement of sale dated 08.05.1986 to be bogus and false, as the agreement referred the word 'Mumbai', Advocate Mr. Oza stated that, it was only after the notification on 28.07.1995 by Revenue and Forest Department, Bombay, the "city of Bombay" and "the Bombay suburban district", renamed those revenue areas of district as "the city of Mumbai" and "Mumbai suburban district" respectively, Mr. Oza stated that even prior to such notification people in their day-to-day colloquial language addressed 'Bombay' as 'Mumbai', and the said fact gets confirmed, as the letter addressed to the Darabshah Vesuna by Homi Jahangir Vesuna of 1st February, refers his residence as "Mumbai", thus, stated that mention of the place as "Mumbai" in the agreement of sale dated 08.03.1986, should not create any doubt, nor the other side should be taken by any surprise, rather would reconfirm its authenticity.

4.8 In support of his submissions, Senior Advocate R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Mr. Oza also relied on the judgments in case of: (1) Khandubhai Poonabhai Tandel Vs. State of Gujarat, decided by this Court on 19.12.2014 in Criminal Misc. Application No.6152 of 2010,

(2) Kashiben Lakhmanbhai Vs. Gujarat Energy Transmission Corporation Ltd. & Anr., decided by this Court on 05.02.2015 in Special Civil Application No.4017 of 2014, (3) Jinofer Bhujwala Vs. State of Gujarat & Anr., reported in 2015 (2) G.L.H. 112, (4) Manindersingh Jolly & Anr. Vs. State of Gujarat & Anr., decided by this Court on 02.09.2016 in Criminal Misc. Application (For Quashing & Set Aside FIR/Order) No.9849 of 2013, (5) Kishan Singh (Dead) Through Lrs. Vs. Gurpal Singh And Ors., reported in (2010) 8 SCC 775, (6) Madhubhai Virjibhai Patel Vs. State of Gujarat & Anr., decided by this Court on 27.09.2019 in Criminal Misc. Application No.7023 of 2009, and (7) Prakash Ramchandra Barot & Ors. Vs. State of Gujarat & Anr., reported in 2011 (3) G.L.H. 211.

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5. Per contra, learned advocate Mr. B.S. Raju along with Advocate Mr. Akash A.Singh for the complainant, submitted that it is not a simpliciter case of fortuitous FSL document being sought to be used against the applicant and other co-accused in the absence of any other circumstances; rather, in the present case the timeline of events, the facts of the case and the conduct of the applicant and the co-accused clearly highlight the fraud and forgery committed, in which privately owned land is sought to be grabbed, and the private handwriting expert opinion and the FSL report, which came in favour of the complainant, corroborate the same, and the same is also borne out from the applications made to the police authorities highlighting the criminality well before any FSL report was received by the claimant. 5.1 Advocate Mr. Bhadresh Raju submitted that the FIR pertains to the land bearing Survey No.113 of Village Vesu, Surat, and applicant along with other co-accused clearly and evidently concocted a forged and bogus R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 agreement of sale dated 08.03.1986, and sought to usurp the legally owned land of the complainant and his family members through various illegal and nefarious means. 5.2 Mr. Raju further submitted that the applicants allegedly came into ownership of the said land in 1986 through the forged banakhat which also includes recitals of possession and complete payment. The applicants have claimed a right in the land through Darabshah @ Dali Patel in Tenancy Case No.47 of 2000 filed by the applicant and co-accused on ground that Darabshah @ Dali Patel was tenant and was carrying out agriculture activities since 1955. Mr. Raju submits that the said case was filed after 45 years from the concocted date of 1955, sought to usurp the said land by misusing the beneficial provisions of section 70B and section 4 of the Gujarat Tenancy and Agricultural Lands Act, 1948, while the father of the applicants never claimed any rights over the said land in his entire life time and it is evidently only after his passing away, the entire conspiracy to create R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 fictitious and forged documents and usurp the said land was hatched.

5.3 Advocate Mr. Raju submitted that perusal of ULC records of the land dated 22.02.1990 clearly falsify the bogus case of the applicant and co-accused, as the records do not reflect name of the applicant's father as a tenant / farmer in the said land. He submits that the land was clearly shown to have been registered in the name of Mr. Homi Jahangir Vesuna's father i.e. Mr. Jahangirji K.Vesuna.

5.4 Advocate Mr. Raju stated that forged banakhat is not even signed by the alleged purchaser Darabshah @ Dali Patel and the said banakhat was conspired to be concocted after the death of

Darabshah @ Dali Patel and is sought to be misused by the applicant and other co-accused being the heirs of Darabshah @ Dali Patel. He submits that the forged banakhat is further evidently forged and fabricated, as the address of Mr. Homi R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Jahangirji Vesuna is mentioned as "Mumbai" which is shocking as the name of the city "Bombay" was changed to "Mumbai" only in 1995, and it is inconceivable that a genuine documents executed in the 1986 would provide the address of executants as "Mumbai", a city which never existed in 1986, which shows that the forged banakhat was indeed prepared after 1999, in which year the father of the applicant Darabshah @ Dali Patel passed away and was created backdated in order to usurp the land of the complainant and his family members. He submits that backdating a document also amounts to forgery of a document, even if, signatures on the document are genuine, as the definition of forgery would bear out and even otherwise, the forged banakhat is evidently and clearly forged and fictitious. 5.5 Mr. Raju further submitted that it is the case of the applicant and other co-accused that the father of the applicant had paid the amount of Rs.16,000/- to Mr. Homi Jahangirji Vesuna, however, they neither placed any R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 document on record to substantiate any receipt of any cash amount, nor there is any clear submission as to why the father of the applicant, despite making complete payment and accepting possession as per the recitals of the forged banakhat, never filed any suit for specific performance within 3 years and/or during his lifetime and why the applicant and co-accused preferred a civil suit for specific performance after 16 years from the alleged date of execution of the forged banakhat.

5.6 Advocate Mr. Raju submitted that the argument of some other so-called documents having been signed by Mr. Homi Jahangirji Vesuna is completely bogus, malafide and misleading. He submits that once a document is admittedly forged, any other contention of the accused about any other circumstances would fall within the realm of the defence of the accused, which is not to be agitated in a quashing petition and remedy is available to them during trial. Mr. Raju submits that the accused have not produced the originals of such documents, as has R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 placed reliance upon and there is nothing brought on record which would indicate that such documents exist. Mr. Raju submits that an affidavit dated 13.09.2000 by one Mr. Babu Chotubhai Tailor was submitted before the Mamlatdar, Surat in Tenancy Case NO.47 of 2000, wherein he has clearly stated that Mr. Homi Jahangirji Vesuna had sold him certain other lands, and it is evident that if the accused were to misuse any so-called communication in regard to other sets of lands, the same cannot be seriously relied upon in a quashing petition, and therefore stated that all these aspects point out the glaring need for a thorough and proper investigation into the offences in question.

5.7 Mr. Raju, learned advocate for the complainant, further submitted that the said land was transferred in the name of Mr. Homi Jahangirji Vesuna in the year 1997, and in the same year, Mr. Homi Jahangirji Vesuna executed an irrevocable Power of Attorney in favour of the complainant, and further stated that, through Power R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 of Attorney, an agreement to sell was executed on 22.10.1997 in favour of Shardaben Tamkhidas, wife of complainant and Anup Tamkhidas, son of complainant, and even in the revenue records the name of wife and son of the complainant was incorporated, and all the revenue proceedings preferred by the petitioners herein were decided in favour of the complainant.

5.8 Advocate Mr. Raju stated that Mr. Homi Jahangirji Vesuna clearly and consistently, all throughout, has held that the banakhat is not executed by him, and it is a forged document. Mr. Raju submitted that after retirement, Mr. Homi Jahangirji Vesuna returned to Surat in the year 2012 and after that he ran pillar to post to support the case of the complainant, and it is unfortunate that he passed away. He submits that the present petitions, are preferred on an absolute misunderstanding of the law and that the applications are preferred without disclosing the vital facts and without any substance in law, which shows that the accused have not approached R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 this Court with clean hands and therefore the petitions are required to be dismissed with costs. 5.9 Advocate Mr. Raju further submitted that the Hon'ble Apex Court and High Courts as well as this Court have held in multiple cases that quashing of FIR is a serious matter and should only be done in exceptional circumstances. In the absence of such exceptional circumstances in the present case, the investigation should be allowed to proceed, and the accused persons can raise all relevant defenses and objections during the course of the trial. Advocate Mr. Raju heavily relied upon the guidelines as laid down by Hon'ble Apex Court in the case of Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra, 2021 SCC Online SC 315, for quashment of FIRs especially for cases where investigation is ongoing and which discloses cognizable offences. The Hon'ble Apex Court in the above case has laid down certain guidelines, which are as under:

"80. In view of the above and for the R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

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ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be

exercised sparingly with
circumspection, as it has been

observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

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viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/ summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the Parameters of quashing and the self-restraint imposed by law, more particularly the Parameters laid down by this Court in the cases of R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid Parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/ disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 for grant of interim stay of further investigation, after considering the broad Parameters while exercising the powers under Section 482 Cr.P.C.

and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid Parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted"

as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

5.10 Mr. Raju submits that, the facts of the case, and R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 the conduct of the applicants and co-accused persons illustrate fraudulent and forged activities, as well as a malicious attempt to seize privately owned land. Therefore, the complainant submits that the applicant and co-accused persons have caused harm to him and have committed serious offences under Sections 406, 420, 465, 467, 468, 471, 114 and 120B of IPC. 5.11 Advocate Mr. Raju stated that the applicant's father died in 1999, and yet the applicant and/or the applicant's

father failed to institute a suit for specific performance or failed to enforce their rights under the Gujarat Tenancy and Agricultural Lands Act, 1948 during his lifetime. It was only after the death of the applicant's father, that the applicant instead filed a Tenancy Case no. 45 of 2000 under Section 70B and Section 4 of the Gujarat Tenancy and Agricultural Lands Act, 1948, 45 years after the alleged tenancy began. Further, stated that there was a significant delay of 16 years between the date of the creation of the concocted forged banakhat in R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 1986, and in the filing of the Special Civil Suit No. 316 of 2002. Even under the Article 54 of the Limitation Act the Civil Suit is hopelessly barred by limitation. He submits that the case of the applicant and the co-accused is that the forged banakhat, records that the father of the applicant had paid the bogus mentioned amount of Rs.16,000/- to Mr. Homi Jahangirji Vesuna in installments in cash. While, neither the applicant or co-accused have placed any document on record to substantiate any receipt of any cash amount by Mr. Homi Jahangirji Vesuna, nor is there any clear submission as to why the father of the applicant, despite making complete payment and accepting possession as per the recitals of the forged banakhat, never filed any suit for specific performance within 3 years and/or during his lifetime and why the applicant and co-accused preferred a civil suit for specific performance after 16 years from the alleged date of execution of the forged banakhat and in fact 2 years after having preferred a completely contradictory application under the Tenancy Act. Further, stated that if as per the R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 recitals of the forged banakhat, if entire payment was received, then the applicants have failed to explain reason as to why a forged banakhat was entered into instead of a Registered Sale deed. Advocate Mr. Raju submitted that, it was only after the complainant entered into the land in question, the applicant and other co-accused created this back-dated forged and fabricated banakhat, only with a view to defeat the rights of Respondent No. 4.

5.12 Advocate Mr. Raju submitted that the criminal and civil proceedings may proceed simultaneously and cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case, as it has been held and observed by Hon'ble Apex Court in Syed Askari Hadi Ali Augustine Imam v. State (Delhi Administration), (2009) 5 SCC 528 as follows :

".....Indisputably, in a given case, a civil proceeding as also a criminal R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case. The question as to whether in the facts and circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of the case. It is, however, now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible. The law in this behalf has been laid down in a large number of decisions."

5.13 Advocate Mr. Raju submitted that it is a settled principle of law that civil and criminal proceedings are separate and distinct in nature. It is untenable to suggest that the pendency of a civil suit can be a ground for R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 setting aside criminal proceedings, as observed and held by the Hon'ble Apex Court in the case of Kamladevi Agarwal vs State of W.B, (2002) 1 SCC 555 has observed and held as follows:

".....In view of the of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings."

5.14 Advocate Mr. Raju therefore submitted that the pendency of a civil suit cannot be a ground for setting R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 aside criminal proceedings, and the two proceedings are separate and distinct, and the pendency of one cannot influence or determine the outcome of the other. 5.15 Relying upon section 53A of the Transfer of Property Act, 1882 (for short "TOPA"), Advocate Mr. Raju submitted that Section 53A of TOPA cannot be applied in the present case of malafide, bogus and forged banakhat which has initiated the criminal proceedings. He submitted that once criminal justice machinery is set in motion, Section 53A of TOPA becomes irrelevant and is thus not applicable in the present case. Furthermore, Section 53A of TOPA is a shield and not a sword and that Section 53A of TOPA cannot be applied in the present case where the criminal allegation is that the applicants have committed the offence of claiming the possession over the land in question through creating a backdated malafide, fraudulent and concocted document. 5.16 Advocate Mr. Raju stated that applicants herein R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 have relied on the case of the Kishan Singh vs Gural Singh (2010) 8 SCC 775, on the ground that there was a delay in filing of FIR. He submits that this judgment is not applicable to the present case, as it pertains to a delay of registration of FIR after losing in a civil suit, and in the present case, the suit was dismissed for default in 2011 by the learned Civil Court, and on 28.01.2012, for the first time, the complainant made a representation and application to the police authority against the applicant and other accused persons. He submitted that when the said representation and application was made before the police authority, no civil suit was in existence and that therefore, the complainant cannot be said to have lost in the civil suit, and thereafter filed an application before the Police authority; however multiple representations were made to the concerned police authorities regarding various issues pertaining to the land in question since 2012, and the purported delay in registration of the FIR was on part of the police authorities, onus of which cannot be attributed solely to the complainant. Mr. Raju R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 submits that on this question of law, this High Court has held that the inaction of the authorities cannot be deemed as a delay on the part of the complainant at Paragraph-37 in case of Labhubhai Ranchhodbhai Patel & ors vs State of Gujarat in CR.MA No.16076 of 2014, and at Paragraph-21 in the case of Mafat Mohanbhai Parmar & ors vs State of

Gujarat & ors. in CR.MA No. 18170 of 2012.

5.17 Advocate Mr. Raju relying on Para 7, 8, 9 and 10 of Avtar Singh Khurana vs. State 2013 SCC OnLine Del 2721, stated that mere fact that FIR was lodged after a certain period cannot be ground for quashing the FIR; further it is submitted that the invocation of Section 482 of the Cr.P.C. is not maintainable in this case, as there is no gross abuse of the process of law or miscarriage of justice.

5.18 Relying on Para 8, 9, 10 and 11 of the case of State of M.P vs. Awadh Kishore Gupta (2004) 1 SCC R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 691, Advocate Mr. Raju submitted that while exercising jurisdiction under Section 482 of Cr.P.C., the High Court would not ordinarily embark upon an inquiry whether the evidence in question is reliable or not or whether a reasonable appreciation of it accusation would not be sustained, as that is a function of the trial court. Mr. Raju further submitted that it is a well settled law that the Court will not be justified to embark into reliability or genuineness of the allegations at the quashing stage, as held by the High Court at Allahabad in case of Himanshu Khatri vs. State of UP and Ors MANU/UP/1041/2019 as follows :

".....It is well-settled law by the Apex Court that the power of quashing the criminal proceeding and F.I.R. can be exercised very sparingly and with circumspection. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or complaint. The delay in lodging in F.I.R. in such cases cannot be a ground to quash the F.I.R. unless the R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 court feels under peculiar circumstances that such delay tantamounts to abuse of process of law. Applying the aforesaid test as laid down by the Apex Court in catena of judgments and upon perusal of contents of the impugned F.I.R. dated 14.11.2018, it cannot be said that the same does not disclose the commission of any cognizable offence. This Court under Article 226 of the Constitution of India cannot delve into the exercise of appreciation of evidence and record it's finding one or other way. At this stage, it is on the part of Investigating Officer only to find out and elicit the truth, therefore, we have not proceeded to examine the reliability or genuineness of the allegations made in the F.I.R., as any finding recorded by us may prejudice the interest of the parties concerned"

5.19 Mr. Raju therefore submitted that this Court must consider the representations made by the complainant to the police authorities and the subsequent actions taken, and that delay and lack thereof, by the police authorities in their evaluation of the case must not R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 be a ground for quashing of the FIR. Mr. Raju relied the judgment of this Court in case of Chaudhari (Loh) Valjibhai Parthibhai vs. State of Gujarat & Anr. in CR.MA/9107/2015, wherein it has been observed as follows:

" 2. Today, I am confronted with a situation where there is a clear cut report of the handwriting expert stating that the signatures are forged, and on the other hand, a strong assertion on the part of the applicants that there is a gross delay of almost a decade in registering the F.I.R.

13. The general rule of criminal justice is that "a crime never dies". The principle is reflected in the well known maxim "nullum tempus aut locus occurrit regi"

(lapse of time is no bar to Crown in proceeding against offenders). In this context, I may quote the observations of the Supreme Court in the case of Japani Sahoo vs. Chandra Sekhar Mohanty [AIR 2007 SC 2762] as under:

"14. The general rule of criminal justice is that "a crime never dies". The R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 principle is reflected in the well known maxim nullum tempus aut locus occurrit regi (lapse of time is no bar to Crown in proceeding against offenders). The Limitation Act, 1963 does not apply to criminal proceedings unless there are express and specific provisions to that effect, for instance, Articles 114, 115, 131 and 132 of the Act. It is settled law that a criminal offence is considered as a wrong against the State and the Society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a Court of Law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a Court of Law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict."

14. In the case of Sirajul and others vs. State of U.P. [AIR 2015 SC (Supp) 1875, the same principle i.e., "a crime never dies" has been reiterated observing as under:

"9 On the other hand, respondent No. 2-

complainant submitted that bar of

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limitation does not apply beyond the

statutory bar under Section 468, Cr.P.C. A crime never dies. A criminal offence is a wrong against the society even though committed against an individual and thus the prosecution cannot be thrown out merely on the ground of delay. In support of this submission, reliance has been placed in Japani Sahoo v. Chandra Sekhar Mohanty [(2007) 7 SCC 394 :

(AIR 2007 SC 2762].

15 Thus, it is evident that the question of delay in launching the criminal prosecution may be a circumstance to be taken into consideration in arriving at the final decision. But, it cannot itself be a ground for quashing the F.I.R.

5.20 Mr. Raju further submitted that, the accused has malafidly submitted that the FSL report should not be considered, as it is based on the examination of a laminated document and the complainant submits that the laminated document was produced by the brother of the applicant themselves, as rightly pointed out in the papers of Chargesheet, before the police after a very long R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 period of time; in spite of the Civil Court's order at relevant point of time, thus, indicating that they were aware of its laminated nature all along. He submits that, even otherwise, the FSL report is in the favour of complainant, which clearly and conclusively establishes that the signature of the original owner is forged and fabricated. Mr. Raju relied on the judgment of the Hon'ble Apex Court in the case of Manorama Naik versus the State of Odisha & Anr in Criminal Appeal No. 423 of 2022, as follows:

".....It is pointed out that the opinion of the handwriting expert was filed for the first time before the High Court and was not available with the Trial Court at the time when cognizance was taken. That apart, the signatures and handwriting of the person can also be proved under Sections 45, 47 and 73 of the Indian Evidence Act, 1872. Therefore, opinion of the handwriting expert is not the only way or mode of providing the signature and handwriting of a person.

It will be open to the accused to raise all R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 questions and contentions before the Trial Court in accordance with law."

5.21 Mr. Raju therefore argued that as held in the above-mentioned case by Hon'ble Apex Court, in a case where a signature of a person is in dispute, the correctness of the same has to be proved in the trial court, where the accused would have the liberty to raise all questions and defenses. He submitted that, in the present case, the alleged signatory of the forged banakhat has consistently stated, under oath, that the signature on the document is not his own; further, the underlined circumstances also states that the signature of original signatory is not genuine and there is nothing on record to prove that the signature was genuine and this transaction ever took place.

5.22 Mr. Raju to the case of Rajeshbhai Muljibhai Patel and Ors Vs State of Gujarat and Ors., (supra), relied upon by Senior Advocate Mr. Oza, wherein the facts are that the Summary Suit was filed by the applicant in which four receipts were sent for handwriting expert R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 opinion, and as conclusion, the handwriting expert's opinion was not favorable and thereafter the FIR was registered and it was observed that "When the issue as to the genuineness of the receipts is pending consideration in the civil suit, in our view, the FIR ought not to have been allowed to continue as it would prejudice the interest of the parties and the stand taken by them in the civil suit." responded to submit that in the present case the FIR is not based on the opinion of the handwriting expert, and the first application for registration of FIR was made on 28.01.2012, and it was much after that the handwriting expert's report was brought on record. Mr.

Raju relies upon the case of M Krishnan vs. Vijay Singh, (2001) 8 SCC 645, wherein it has been observed by the Hon'ble Apex Court as follows:

".....Despite referring to various judgments of this Court relating to the interpretation and scope of Section 482 of the Code and the indictment that the High Court should be slow in interfering with the proceedings at the initial stage, the learned Single Judge of the High R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Court passed the impugned order. The High Court appears to have been impressed by the fact that as the nature of the dispute was primarily of a civil nature, the appellant was not justified in resorting to the criminal proceedings. Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of.

5.23 Mr. Raju relied on the case of Vijayander Kumar v. State of Rajasthan, (2014) 3 SCC 389, wherein it has been observed by the Hon'ble Apex Court, as follows:

"Learned counsel for the respondents is correct in contending that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 informant/complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint discloses a criminal offence or not. This proposition is supported by several judgments of this Court as noted in Paragraph 16 of judgment in the case of Ravindra Kumar Madhanlal Goenka and Another vs. Rugmini Ram Raghav Spinners Private Limited"

Mr. Raju, therefore submitted that the case referred to by the applicants herein cannot be applied to the present case, as the FIR is not solely based on the opinion of the handwriting expert and that facts and circumstances underlined are absolutely different from the present case.

5.24 Advocate Mr. Bhadresh Raju also relied upon the case of Khandubhai Poonabhai Tandel v. State of Gujarat 2014 SCC OnLine Guj 15476 : (2015) 56 (2) GLR 1146 and Madhubhai Virjibhai Patel Versus State Of Gujarat & Ors in CR.MA No. 7023 of 2009, R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 which states about the delay in filing of FIR is a ground for quashing of the FIR. However, the case relied upon by the applicants herein does not apply to the present case, as since 2012, complainant has ran from pillar to post for filing of the FIR and that even after several applications and by the direction of this High Court, the FIR came to be registered in 2017. Further, the applicant has not approached this Court with clean hands as, the very first claim of the applicant for possession over the disputed land was made with malafide intentions and the petitioners have claimed their tenancy rights over the land after a delay of 45 years and have filed the suit after a delay of 16 years. For the said contention Mr. Raju relied upon the Jiteshbhai Rameshbhai Gajeria vs State of Gujarat in CR.MA No. 10765 of 2021. This Court in the above mentioned case has observed and held as follows:

"Merely because there is delay in filing FIR, the benefit cannot be given to the present applicant more particularly, when there is an explanation given by R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 the complainant."

5.25 Advocate Mr. Raju stated that the applicants have referred to the case of Prakash Ramchandra Barot v. State of Gujarat 2011 SCC OnLine Guj 4554 : (2012) 53 (1) GLR 449 : (2011) 3 GLH 211, wherein it was observed that the FIR was quashed on the ground that first informant never said that the sale deed was false and that the offence of the forgery was not made out. However, in the present case the original signatory of the said document since inception has stated on oath and that even otherwise, his signature are not genuine and are forged and fabricated.

5.26 Advocate Mr. Raju submitted that, the FSL report along with the opinion of Handwriting Expert is in favour of the complainant and upon perusal of the same, it becomes crystal clear that the banakhat is forged, concocted, bogus and backdated and therefore this Court is not required to decide or adjudicate the disputed facts in the present case, while exercising the discretion under R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 the provisions of Article 226 of Constitution of India, 1950 read with Section 482 of CrPC, as the same is subject matter to be dealt with by the trial Court. Advocate Mr. Raju further submitted that the allegations made in the FIR are serious and requires a thorough investigation, and therefore, the petitioners herein cannot be allowed to escape the consequences of their alleged actions by quashing the FIR on flimsy grounds. Further, submitted that the evidences produced on record as well as provided to the investigating agency by the complainant, including the private handwriting expert opinion, is sufficient to establish a prima facie case against the applicants herein. Despite the FSL Report being conclusive in nature, it was the contention of the applicant that the FSL report is inconclusive cannot be the sole ground for quashing the FIR, it was argued by the applicants that second report of FSL was awaited which has been submitted before this Court in the sealed cover. Mr. Raju stated that,

without prejudice to the rights and contentions of complainant with respect to the R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 second FSL report, the fact remains that when there are serious questions and disputes of facts, the same are not required to be dealt with in quashing proceedings and therefore, the investigation of the FIR and further events in connection with the said acts and omissions must be permitted to continue rather than quashing the FIR at this early stage. Advocate Mr. Raju submitted that in the absence of any exceptional circumstances in the present case, the investigation should be allowed to proceed, and the accused persons can raise all relevant defenses and objections during the course of the trial. 5.27 Mr. Raju submitted that in view of the established law of the land, as held and laid down by the Hon'ble Apex Court, the High Court has very limited jurisdiction while deciding or exercising its powers u/s 482 of Cr.P.C., and the Hon'ble Court is not required to conduct a mini-trial by asking the prosecution to prove all the charges against the accused persons, as it is prima facie established in the present case and therefore, the R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 complainant prays that this Court may not exercise its jurisdiction in favour of the applicants. 5.28 Mr. Raju submitted that S.Cr.A. No.6429 of 2017 has been preferred by the petitioners, seeking directions against the investigating officer to consider their representations before taking any further steps in connection with the application dated 03.04.2017 made by the complainant. Mr. Raju further submitted that the applicant in S.Cr.A. No.6429 of 2017 has prayed for issuance of writ of mandamus commanding Police Inspector, Umra Police Station, Surat to consider the representation dated 08.08.2017 made by the applicant in connection with an application dated 03.04.2017 filed by the complainant before taking any further action. Mr. Raju submitted that the said petition is itself infructuous, and any prayer made thereof cannot be allowed. 5.29 Advocate Mr. Raju submitted that in connection with the application dated 03.04.2017, FIR bearing CR R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 No.I-215 of 2017, dated 22.08.2017 has been registered by Umra Police Station, Surat against the applicant and other accused persons. He submits that the present petition has been filed by the applicant on 23.08.2017, and when the present petition was filed, the concerned Police Authority had already taken action on the application dated 03.04.2017 by registering the FIR on 22.08.2017. Therefore, the prayer sought for has become infructuous and therefore, the petition is required to be dismissed as infructuous. Mr. Raju submitted that the applicant has also prayed to issue a writ of mandamus commanding Respondent No.3 to adhere to a circular issued by Commissioner of Police before registration of FIR pursuant to application dated 03.04.2017. He submits that this prayer also has become infructuous as the Respondent No.3 has already registered the FIR pursuant to application dated 03.04.2017, and the applicants have referred to a circular of Commissioner of Police that requires FSL report for registration of FIR. He submits that without prejudice to the case of the complainant, the R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 FSL report on the forged banakhat has come positive, i.e., the signatures have been confirmed to be forged and therefore also, the FIR is maintainable and is not required to be quashed. Advocate Mr. Raju submits that pursuant to the registration of FIR, the applicants have already preferred application for quashment of the same, and thus, prayer submitted in S.Cr.A No. 6429 of 2017 has become infructuous and is required to be dismissed. Advocate Mr. Raju submitted that in prayer-C, the applicant has prayed to secure the forged banakhat and send the same for FSL. However, applicant has made this prayer malafidely as the forged banakhat was always in the custody of the applicant and the same was produced before the Investigating Agency by the brother of the applicant itself. Mr. Raju further submitted that, the FSL report on the very same forged

banakhat has come positive, meaning the signature therein was forged. 5.30 In Regard to the petition seeking quashment of order dated 08.01.2018 passed by Ld. 2 nd Addl. Sessions R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Judge, Surat in Cr.M.A. No. 3360 of 2015 below Exh.-34 u/s 145 Cr.P.C. proceedings, Mr. Raju submitted that in SCRA 679 of 2018, the applicants have sought quashment of the order dated 08.01.2018 passed below Exh.-34 by the learned Additional Sessions Judge, Surat whereby the learned Judge was pleased to direct the applicants to hand over the possession of the subject property to the complainant. Advocate Mr. Raju stated that, upon an application dated 28.01.2012 made by complainant to P.I., Umra Police Station, the P.I, submitted a report dated 09.02.2012 to the learned Executive Magistrate and proceedings under section 145 of CrPC came to be initiated. Advocate Mr. Raju relied on the judgment of Hon'ble Apex Court in Jagdish Prasad v. Angoori Devi, (1984) 2 SCC 590, to submit that a writ of certiorari, as prayed by the applicants in the present case cannot be allowed to correct an error of fact, which even otherwise, is not the case herein, as the complainant is in rightful possession of the said land as held by the learned 2 nd Addl. Sessions Judge, Surat and thus, prayed to dismiss R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 the petition. Mr. Raju submitted that the suit filed by the applicants came to be dismissed for default on 04.07.2011 and thereafter the same was restored on 12.09.2014. He submits that the proceedings under section 145 of Cr,P,C, were initiated in the year 2012, when the suit was already dismissed for default, and, therefore it cannot be said that as the suit is pending, the proceeding under section 145 Cr.P.C. with a conclusive order passed under Section 145 Cr.P.C. by the magistrate of competent jurisdiction should be set aside merely because the unsuccessful party has approached the Civil Court. He submits that an order made u/s 145 Cr.P.C. deals only with the factum of possession of the party as on a particular day, as the same has been held by the Hon'ble Apex Court Jhummal alias Devandas v. State of Madhya Pradesh and ors., (1988) 4 SCC

452. 5.31 Advocate Mr. Raju further submitted that, the present petition has been preferred under Article 226 of Constitution of India and not under Article 227 of R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Constitution of India, and a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 226 of Constitution of India, be it a Writ of Certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or law. He submitted that the power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion, as has been held by the Hon'ble Apex Court in Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC

675. 5.32 Advocate Mr. Raju further submitted that the arguments made and grounds raised in the quashing petitions by the complainant should be considered to know the conduct of the applicants, that despite the applicants claiming their father's possession since 1955, they failed to show on record, why have they have not R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 filed any tenancy proceedings till 2000, i.e. after the death of their father in 1999, and have further failed to prove their claim of possession on the land in question. Moreover, the FSL report proving the concocted document as forged document itself disentitles the applicants of their claim of possession and also any right to claim possession in the land in question. Mr. Raju, therefore, submitted that

the order dated 08.01.2018 passed below Ex.34 by the learned Additional Sessions Judge, Surat is not required to be interfered with and therefore SCRA No.679 of 2018 is required to be rejected with cost.

5.33 Advocate Mr. Raju submitted that the applicants have preferred the above petitions with an absolutely mala fide intention to evade the administration of justice and criminal machinery in force, and therefore in the interest of justice as well, all connected matters are required to be rejected with costs by this Court.

6. Having heard both the Advocates, perusal of R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 the petition reflects that, Accused nos.4, 5 and 6 have made a prayer in Special Criminal Application No.679 of 2018 to set aside the order below Exhibit-34 dated 08.01.2018 passed in Criminal Misc. Application No.3360 of 2015 passed by 2nd Additional Sessions Judge, Surat, and further by an amended prayer has asked for an appropriate order or direction to respondent nos.2 and 3 to hand over the possession of the subject land to the applicants.

6.1 The applicants state that their father Darabsha @ Dali Faramji Patel was in possession of the subject land as a tenant, prior to 1955, and after the death of applicant's father - Darabshah @ Dali Faramji Patel, they had cultivated the land and were in possession of the land. It is stated that the original tenant Darabshah @ Dali Faramji Patel and the original owner Homi Janhagirji Vesuna, both being of parsi Community, had cordial relations and because of the trust, the original owner agreed to sell the land to the father of the applicants, R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 agreement was executed on 08.03.1986. The agreement acknowledges the possession of the father Darabshah, who expired on 13.03.1997, and thereafter because of the dispute between the parties, the applicants initiated tenancy proceedings in the year 2000, which reached till Gujarat Revenue Tribunal, and vide order dated 30.09.2005 in Revision Application No.10/BS/42/2002, the matter came to be remanded before the Mamlatdar for deciding the matter afresh, and it is stated that the issue still pending before the Mamlatdar, Krushi Panch, Chaurasi.

6.2 The order, challenged is under section 145 of the Cr.P.C., where by an order dated 08.01.2018, the 2nd Additional Sessions Judge, Surat allowed Criminal Misc. Application No.3360 of 2015, and ordered to hand over the possession to the complainant - Surendrakumar Ishwarlal Tamkhidas, which was in the possession of police Commissioner, Surat, Vesu in accordance to the order dated 14.05.2012 in Special Criminal Application R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 No.1506 of 2012, where the possession with the police Commissioner, Surat of Regular Survey No.209 with new Regular Survey No.111/3 was handed over after a panchnama. The learned Additional Sessions Judge while passing the order has observed that his order of handing over the possession and the observation would be subject to final order of Senior Civil Judge, Surat in Special Civil Suit No.316 of 2002. The issue, which was raised by the learned Additional Sessions Judge for consideration as to the possession of the disputed land, two months prior to the date of handing over the possession to the Police Commissioner, as per Section 145 of the Cr.P.C. The matter came for decision before the Additional Sessions Judge, as the order dated 23.09.2015 passed by 5th Additional Sessions Judge, Surat in Criminal Revision Application No.83 of 2015 came to be quashed in view of the order passed on 08.09.2017 by this Court in Special Criminal Application

(Quashing) No.7677 of 2016. The Court has observed and gave the final direction in terms of Paras 26 to 35, which is reproduced herein under:

R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 "26. Section 145 is intended only to provide a speedy remedy for the prevention of breaches of peace arising out of the dispute relating to the immovable property by maintaining one or other of the parties in possession.

27. The object of this section is to enable a Magistrate to intervene and pass a temporary order in regard to the possession of property in dispute, having effect until the actual right of one of the parties has been determined by a competent Civil Court. The Magistrates should guard themselves against the section being abused by person using it with the object of getting possession of the property and driving the other side to figure as a plaintiff and prove his title. In a proceeding under Section 145, a Magistrate has not to enter into the question of title or the right to possess and the foundation of his jurisdiction is the existence of a dispute likely to cause breach of the peace. The proceedings under Section 145 of the Code are quasi judicial and quasi R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 administrative in nature.

28. Section 146 of the Code confers power upon a Magistrate to attach subject of dispute and to appoint a Receiver. Section 146 of the Code reads thus :

"146. Power to attach subject of dispute and to appoint receiver. (1) If the Magistrate at any time after making the order under subsection (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 appointed by him;

(b) may make such other incidental or consequential orders as may be just."

29. Section 146 is a corollary to Section 145. A Magistrate is empowered under Section 146(1) to attach the subject of dispute in three cases, namely, (i) if it is a case of emergency; or (ii) if none of the parties was in possession; or (iii) if no decision is possible as to the possession.

30. In the case on hand, indisputably, it is the applicant herein, who preferred an application before the concerned police about the dispute as regards the possession of the land in question with the other side. The police, in turn, thought fit to file an appropriate report before the Executive Magistrate in that regard, and the Executive Magistrate, in turn, thought fit to initiate proceedings under Section 145 of the Cr.P.C. When the matter reached before this Court, an order came to be passed on 14th May 2012 in the Special R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Criminal Application No.1506 of 2012 directing the Commissioner of the Police, Surat city to take over the possession of the property, after drawing a panchnama of the actual position as on that date. The Commissioner of Police, Surat city, accordingly, took over the possession, and as on date, the police is holding the possession as a neutral agency.

31. The Executive Magistrate, while passing the final order in the Section 145 of the Cr.P.C. proceedings, held the private respondents herein to be in peaceful and actual possession of the land on the date of filing of the proceedings and two months prior thereto. The Magistrate also passed an order directing both the parties to maintain peace and tranquility. The applicant herein, being dissatisfied with such order passed by the Executive Magistrate, challenged the same before the Sessions Court by filing a Criminal Revision Application No.83 of 2015.

The Revisional Court, ultimately, allowed the revision application vide order dated 23rd September 2015 and R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 took the view that the proceedings initiated under Section 145 of the Cr.P.C. were unwarranted. The Sessions Court, at the time of disposal of the revision application, did not say a single word as regards restoration of the possession. In such circumstances, the applicant herein had to file a miscellaneous application being the Criminal Miscellaneous Application No.3360 of 2015 in this regard before the Revisional Court. The Revisional Court, vide order dated 28th March 2016, thought fit to reject the same on the premise that it is now for the Civil Court to pass appropriate orders so far as the aspect of possession is concerned.

32. I am of the view that pending the proceedings under Section 145 of the Cr.P.C., if the authority concerned or any Court of law has passed an order of attachment of the property, then, on such proceedings being dropped or concluded finally, the necessary direction for the restoration of possession of the property so attached, has got to be passed in accordance with R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 law. The police has been holding the

possession of the property since long as a neutral agency. The proceedings have concluded finally. It would be too much to say that for the purpose of possession, the parties should obtain appropriate orders from the Civil Court in the civil suit, which is pending. If the Revisional Court thought fit to quash the order passed by the Executive Magistrate on the premise that the proceedings under Section 145 of the Cr.P.C. were unwarranted and pursuant to the initiation of such proceedings, if possession is taken over from a particular party, then the Court owes a duty to pass an appropriate order for restoration of the possession.

33. I am of the view that this aspect should be relooked by the Revisional Court, and after hearing both the sides, the Revisional Court shall pass an appropriate order as regards restoration of the possession. Let this exercise be undertaken by the Revisional Court independent of any findings as regards the possession recorded time to time by both the R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Executive Magistrate as well as by this Court, including the first order passed by the Sessions Court. For the purpose of deciding this issue of restoration of the possession, the Court concerned shall keep in mind two things: (1) who was in actual possession of the land in question on the date when the Commissioner of Police, Surat took over the possession by drawing a panchnama, and (2) what was the position prior to two months before the date on which the report of the police was received by the Executive Magistrate.

34. In the result, the impugned order passed by the 2nd Additional Sessions Judge, Surat dated 28th March 2016 in the Criminal Miscellaneous Application No.3360 of 2015 is quashed. The matter is remitted to the Court of the 2nd Additional Sessions Judge, Surat for fresh consideration of the issue as regards restoration of the possession to a particular party. Let this exercise be undertaken at the earliest, and preferably, within a period of two months from the date of receipt of this R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 order, an appropriate order, in accordance with law, be passed. The order that may be passed by the Sessions Court shall be subject to the order that the Civil Court may pass in the civil proceedings between the parties."

35. With the above, this application is disposed of.

6.3 After pronouncement of the judgment, learned counsels for the respective parties brought to the notice to subsequent development in the matter, thus, the Court thereafter passed the further order, which is reflected herein below:

"After the judgment is
pronounced, the learned counsel

appearing for the respective parties brought to my notice few subsequent developments that have taken place in the matter. The civil suit, which was filed by the client of Mr. Y.N. Oza, the learned senior counsel appearing in the matter, was dismissed for default R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 at one point of time. Later, the said suit was restored to its original file. The other side, being dissatisfied with such order of restoration of the suit, had come before this Court. This Court has upheld the order passed by the Civil Court restoring the civil suit.

Thus, as on date, the Special Civil Suit No.316 of 2002 is on the file of the learned 5th Additional Senior Civil Judge, Surat. As the civil suit is of the year 2002 and the issues have already been framed long time back, the Court concerned shall now commence with recording of the oral evidence of the parties. With a view to bring an end to the dispute, the Court concerned is directed to take up the civil suit for hearing at the earliest and see to it that the same is disposed of on or before 31st May 2018 with the judgment. Both the sides are directed to cooperate with the Court concerned for effective and expeditious disposal of the civil suit. Till the appropriate orders are passed by the Sessions Court concerned, the earlier arrangement, as regards possession, shall continue.

R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 6.4 In an earlier order, on 23.03.2015 in Special Criminal Application No.1506 of 2012, the Court had passed an order in terms of paragraph nos.21 and 22, which reads as under:

21. I am left with no alternative but to direct the Additional Executive Magistrate to proceed further with the proceedings which are pending with him as on today and pass a final order in accordance with law, subject to the final order that the Civil Court may ultimately pass on disposal of the suit.

However, having regard to the peculiar facts and circumstances of the case and the nature of dispute between the parties, I would like to continue the arrangement made by this Court while passing the order dated 14th May 2012. Vide order dated 14th May 2012, noted above, the Commissioner of Police, Surat City, was directed to take over the possession of the property after drawing Panchnama of the actual possession prevailing on that day with a view to obviate any further dispute R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 between the parties. Therefore, the possession shall remain with the Commissioner of Police, Surat, till the final conclusion of the proceedings before the Additional Executive Magistrate under Section 145 of the Code. Since the Additional Executive Magistrate would now be proceeding further to dispose of the entire proceedings, it shall be open for both the parties to adduce necessary evidence as regards their respective claims. It will be open for the petitioner herein to point out to the Additional Executive Magistrate that the proceedings under Section 145 of the Code are not warranted, as he has already filed a Civil Suit, which is pending as on today before the Civil Court.

22. The proceedings of Case No.1 of 2012 pending before the Additional Executive Magistrate, Surat, shall be disposed of finally on or before 31st of May 2015. I clarify that I have not gone otherwise into the merits of the matter. It is for the authority concerned to now proceed R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 further in accordance with law, since the challenge in this petition is to a preliminary order.

With the above, this petition is disposed of .

6.5 In Special Criminal Application No.7677 of 2016, the Revisional Court was asked to consider the issue of restoration of possession by keeping in mind two things: (1) who was in actual possession of the land in question on the date when the Commissioner of Police, Surat took over the possession by drawing a panchnama, and (2) what was the position prior to two months before the date on which the report of the police was received by the Executive Magistrate. By order dated 23.03.2015 in Special Criminal Application No.1506 of 2012, the arrangement made by this Court, while passing the order dated 14.05.2012, was extended, as the Commissioner of Police, Surat City was directed to take over the possession of the property after drawing panchnama of the actual possession prevailing on that day with a view to obviate any further disputes between the parties, and R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 therefore, the possession was directed to remain with Commissioner of Police, Surat till final conclusion of the proceedings before the Additional Executive Magistrate under section 145 of the Cr.P.C.

6.6 The learned Additional Sessions Judge, thus, after considering the issues to be decided, as directed by this Court, came to the conclusion that as per MOU of 2005, opponent nos.3 to 5 had admitted that they were not in possession of the subject land, which is suit property of Special Civil Suit No.316 of 2002, and learned Additional Sessions Judge has relied on the document of Land Measurement Rectification (Durasti), Mark 16/2 of Exhibit-16, Annexure-K from page no.78 to 82, and had also observed that on behalf of original owner, Homi Jahangir Vesuna, i.e. the power of attorney holder i.e. the applicant - Surendrakumar Ishwarlal Tamkhidas had undertaken the proceedings for the rectification in the measurement, and the he had preferred an application on 19.12.1999 before the Deputy Collector, Choryasi. It is noted that the copy of the order of that proceeding was placed at R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Exhibit-16 at Serial No.12, Annexure-A, and in the year 2002 on behalf of original owner Homi Jahangir Vesuna, the applicant before the Town Planning Development Officer had remained present before the proceedings of T.P. Scheme, and the communication with regard to the land in connection to Tenancy Case and before the Revenue Authority, the applicant i.e. complainant - Surendrakumar Ishwarlal Tamkhidas remained present, while there was no explanation from the side of the opponent nos.3 to 5, only they have relied upon the Postcards and a Certificate of Talati-cum-Mantri regarding the cattle shed, and the opponent nos.3 to 5 being agriculturists also own agricultural land apart from the subject land.

6.7 The learned Additional District Judge went on to make the observation that in the Certificate regarding the cattle shed, no mention is made of the survey number of the disputed land, and since opponent no.3 also holds the agricultural land apart from the disputed land, the learned Court disbelieved that they were in possession of the land, the applicant - complainant had made a R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 grievance that when he was engaged in the ceremony of the marriage of his son, Manahar Kakadiya and the present applicants, who were respondent nos.3 to 5 in the matter, on 27.01.2012 had tried to construct a compound wall, thus had given an application on 28.01.2012 to the police, and his statement was recorded. Taking into consideration such facts, the learned Additional District Judge to come to the opinion, noted that on 10.12.2012, the Umra Police Station had filed a report before the Additional Executive Magistrate, that two months prior, the possession was not of respondent nos.3 to 5, but of the applicant.

6.8 The learned Additional District Judge in the impugned order had failed to take into consideration the observations made by the Civil Judge in order below Exhibit-5 in Special Civil Suit No.316/2002, as the order dated 06.05.2006, Exh.5, came to be partly allowed of the present applicants, while application, Exhibit-62 of the present complainant i.e. applicant before the Additional R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Sessions Judge in Criminal Misc. Application No.3360 of 2015, was rejected. Both the parties were directed to maintain status quo and the learned Civil Court in order below Exhibit-5 was pleased to observe, as under:

".... Hence, on looking this document with letter dtd. 01.02.1986 and 22.01.1985, it is believable that, an agreement to sell is executed in favour of father of plaintiffs and defendant No.1 have accepted the earnest money.... ."

"... On looking to revenue record and on looking the order of tenancy case No.47/2000 and tenancy appeal No.47/2001 it is appears that, the plaintiffs may be in possession of the suit land. Of course, the defendants have also claimed for possession as a owner. But on considering the above document at this juncture, the plaintiffs may be in possession of the suit land...."

7. This Court while passing the further order in R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Special Criminal Application (Quashing) No.7677 of 2016, had observed that till the appropriate orders are passed by the Sessions Court concerned, the earlier arrangement, as regards possession, shall continue. Here, from the facts of the matters, the possession of the property was noted to be in the hands of the plaintiff of Special Suit No.316 of 2002 i.e. present applicants by the learned Civil court. Apart from the agreement to sell dated 08.03.1986 acknowledging the possession of the father of the applicants, copy of postcards written by the original owner to the father of the plaintiffs of the Suit, copy of the Court Commissioner Report dated 31.07.2002 in Special Civil Suit No.316 of 2002 and the copies of the tax receipts etc.; and further the affidavit of the adjoining from owner were in support on record. The Additional Sessions Judge has referred to a Memorandum of Understanding by opponent nos.3 to 5 i.e. present applicants and has relied upon the conduct of the present complainant of having attended the proceedings before the Town Planning Office on behalf of original owner, R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 while the Additional District Judge did not believe the postal communication between the original owner and the father of the applicants, nor the certificate which was given by the Talati-cum-Mantri; while the learned Civil Judge in Special Civil Suit has believed the letters dated 01.02.1986 and 22.01.1985, and also took notice the order of Tenancy Case No.47 of 2000 and Tenancy Appeal No.47 of 2001, to consider that the plaintiffs were in possession of the suit land. The observations made by the Additional Sessions Judge are contrary to what has been noted in the order passed in special Civil Suit. The documents relied upon to mark the possession; in the Special Civil Suit, has not been considered by the learned Additional Sessions Judge, while reliance was placed on the report of the Umra Police Station; and further about the participation of complainant in Land Measurement Rectification (Durasti) proceedings, for directing the possession. The documents, which have been relied upon to observe the possession of the applicants in Criminal Misc. Application No.3360 of 2014, would be irrelevant to R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 decide the actual possession of the suit property on land, since any document

executed by the present applicants by way of M.O.U., would not displace them with the possession of land, which they hold in view of the agreement of sale dated 08.03.1986, supported by the letters dated 01.02.1986 and 22.01.1985 along with tax receipts and the Court Commissioner's report dated 31.07.2002 in Special Civil Suit No.316/2002, and the affidavit of the adjoining farm owner, which has been relied upon by the learned Civil Judge.

8. The proceedings before the learned Additional Sessions Judge was under Section 145 of the Cr.P.C., while the dispute regarding the possession and ownership is pending before the Civil Court, where the order of status quo had been passed; the jurisdiction of District Magistrate oust, either to the proceedings under section 145 or 146 of the Cr.P.C. The challenge before the Additional Sessions Judge was against the order of Divisional Magistrate, and, by an order dated 23.09.2015 R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 by 5th Additional Sessions Judge in Criminal Revision Application No.83 of 2015, the order passed by the Executive Magistrate, Surat in Case No.1 of 2012, dated 30.05.2015, was quashed and set aside, as it was remitted back, and the case was referred to Additional District Judge for deciding the issue of restoration of the possession with a direction to keep in mind the actual possession of the land in question on the date when the Commissioner of Police took over the possession by drawing a panchnama; and the position prior to two months before the date of the report of the police received by the Executive Magistrate. The said direction was with observation of object of section 145 of the Cr.P.C., which enables the Magistrate to intervene and pass a temporary order in regard to the possession of property in dispute, having effect until the actual right of one of the parties has been determined by a competent Civil Court.

8.1 Here, when the Civil Court had made a prima R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 facie observation by passing an order below Exhibit-5 regarding the possession of the property, and when the plaintiffs' possession on the suit land was considered with documents referred, the Additional District Judge was required to take that fact into consideration, since the order was passed under the premise of provision of section 145 of the Cr.P.C., which intends to provide speedy remedy for prevention of breach of peace, arising out of the dispute relating to immovable property by maintaining one or other party in possession. 8.2 Section 146 of the Cr.P.C. is with regard to attachment to the subject in dispute and to appoint a receiver. Here, in this case, possession of the property was handed over to the Police Commissioner, and, as provided under section 146 Cr.P.C., while making an order under section 145 Cr.P.C., when case perceived is of emergence, and the District Magistrate decides that none of the parties were then in such possession, as referred to in section 145 Cr.P.C., and he is unable to R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 satisfy himself as to which of them was then in such possession of the subject in dispute, then he may attach the subject of dispute until a competent Court determines the rights of the parties, that too, with regard to the person entitled to the possession thereof. Thus, in view of the provisions of section 146 Cr.P.C., the learned Additional Sessions Judge failed to consider the order passed below Exhibit-5, and rejection of Exhibit-62 in the Special Civil Suit.

9. Criminal Misc. Application (Direction) No.1 of 2018 in Special Criminal Application No.6429 of 2017 has been preferred by Minu Darabsha @ Dali Patel seeking direction to the Investigating Officer to remove the lamination on the agreement to sell dated 08.03.1986, and to send it to the

FSL for verification afresh and to call for report.

9.1 The facts narrated in the memo of application suggests that this Court vide order dated 06.04.2018 in the main quashing petition along with allied matters R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 directed the investigating officer to independently collect the documents, having original hand writing of author of the agreement to sell in question, and forward the same for opinion of the hand writing expert. This Court also directed the Investigating Officer that the said exercise shall be undertaken within 15 days from the date of the order, and Forensic Science Laboratory was also directed to forward the report at the earliest. It is stated that the Investigating Officer has collected the agreement to sell dated 08.03.1986 and sent it to F.S.L. for verification without removing the lamination on the said document. 9.2 The report received of the handwriting expert and relied upon by the complainant is not on the original disputed document. The prayer of Minu Darabsha @ Dali Patel is to the effect of directing the Investigating Officer to remove the lamination on the agreement of sale dated 08.03.1986, and to further direct him to sent it to FSL for verification afresh. The original disputed document would be placed in the Civil Suit. It is stated that Investigating R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Officer has collected the document dated 08.03.1986; however, as per the applicant, the said document is laminated, and according to Senior Advocate Mr. Oza, who has relied upon the judgment of R.G. Harilal, S/o R.Gopinathan, Vs. Joint Registrar of Co-operative Societies (General) & Ors. (supra), the expert opinion of the laminated document would bear no value.

10. Criminal Misc. Application No.6396 of 2017 has been filed for quashing of F.I.R. being C.R. No.I-45 of 2016 filed by A.S.I., Umra Police Station under sections 447, 114 and 188 of Indian Penal Code against accused - Minu Darabsha @ Dali Patel.

10.1 The allegations levelled in the complaint against the accused are that, when complainant - A.S.I. of Umra Police Station Shri Babubhai Gopalbhai was present at the police station on 16.02.2017, at 13:15, he was informed by the P.S.I. of Umra Police Station that Surendra Ishwarlal Tamkhidas had given information at R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 police station for the property situated at village Vesu of Revenue Survey No.209 (New Survey No.111/3) in the custody and possession of police that some persons are trying to erect iron angle upon the said property, and informed the complainant to go the place of incident along with son of Surendra Ishwarlal.

10.2 It is alleged by the complainant that when he along with son of Surendra Ishwarlal, reached at the place of incident, he saw iron angles placed upon the subject property and found six to seven persons present there. It is alleged that as the disputes were going on between the accused and Surendrakumar Ishwarlal, and Surendrakumar Ishwarlal had preferred Special Criminal Application No.1506 of 2012, wherein the order was passed of taking over the possession of subject property with Umra Police Station, pursuant to which the Police Inspector of Umra Police Station had carried out procedure under section 145 of the Cr.P.C. and carried out panchnama on 14.05.2012, and possession of the R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 subject property was taken over by Umra Police Station. It is alleged that the present applicant and some unknown persons had tried to trespass the subject property by putting iron angle.

10.3 It is stated by the complainant in the FIR that the possession of the subject property is with Police Inspector of Umra Police Station, pursuant to the order passed by this Court and there is no order by the High Court or any Civil Court to give back the possession and knowing that the possession is with police, the applicant or some aides of applicant or some unknown persons illegally entered upon the subject land and erected iron angles and have committed breach of order of this Court, and thereby committed offence.

10.4 F.I.R. being C.R. No.I-45 of 2016 was filed on the premise that the accused, referred therein, had tried to erect iron angle alleging that they had tried to illegally enter upon the subject land. Whether the persons R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 named in the FIR had the authority, at the said relevant time, to enter upon the land, would be question of fact, and, at the said relevant time, the police was in possession of the property. The FIR is against Minu Darabshah @ Dali Patel and other unknown persons. The FIR came to be filed by A.S.I. Babubhai Gopalbhai on the information given by Surendra Ishwarlal Tamkhidas, where the A.S.I. along with son of Surendra Ishwarlal Tamkhidas had visited the place and had seen six to seven person present at the disputed land. It is strange to note that though six to seven persons were found present by the A.S.I., he had failed to inquire from them about their names and residence. None of them had been named in the F.I.R. The fact reflected in the FIR is about the Special Criminal Application No.1506 of 2012 filed by Surendra Ishwarlal Tamkhidas, and by an order of this Court, the possession of the property was given to the police, and accordingly the then Police Inspector Shree Umra, initiated the proceedings under section 145 of the Cr.P.C. on panchnama dated 14.05.2012, and had taken R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 the possession of the property.

10.5 It is to be noted that though the possession was with the police, the police failed to protect the same from such unknown persons. The police noted in the FIR that there is no order from the Civil Court of handing over the possession of the property to Minu Darabshah @ Dali Patel or to his man; in spite of that, by illegally trespassing, they had placed iron angles. 10.6 The order of Civil Court below Exhibit-5 in Special Civil Suit No.316 of 2002, is dated 06.05.2006. The panchnama handing over the possession of the disputed property to the police is dated 14.05.2012. The rigmarole of the proceedings between the parties before the revenue authority and the District Magistrate and even before the Civil Court has prolonged the resolution of the actual dispute between the parties, where in the order dated 08.09.2017 in Special Criminal Application (Quashing) No.7677 of 2016, the facts were brought to R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 the notice of the Court about restoration of the Special Civil Suit No.316 of 2002, where the issues had already been framed long time back, and the Court was required to commence with recording of the oral evidence, and the parties were directed to co-operate the Court concerned for effective and expeditious disposal of the Civil Suit.

11. In case of Rajeshbhai Muljibhai Patel Vs. State of Gujarat (supra), the Hon'ble Apex Court while considering the receipts filed in the Suit and it sent to the handwriting expert, and when handwriting expert had opined that the signatures did not tally with the sample signatures, having observed that the issues regarding the genuineness of the receipts pending in the Civil Suit, the Hon'ble Apex Court came to the conclusion that the FIR ought not have been allowed to continue, as it would prejudice the interest of the parties and the stand taken by them in the civil suit. Though,

the opinion of the handwriting expert is relevant piece of evidence in terms of section 45 of the Indian Evidence Act. It was noted R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 that, it was not a conclusive evidence and always open to the parties to adduce appropriate evidence to disprove the opinion of the handwriting expert. Further, section 73 of the Indian Evidence Act empowers the Court to compare the admitted and disputed writings for the purpose of forming its own opinion.

11.1 Here, in this case, the learned Civil Judge while deciding Exhibit-5, has given the prima facie observation with regard to the disputed document. Now, the parties to the suit would be required to adduce evidence, so that the disputes get resolve and the parties do not get enrolled in the criminal proceedings. 11.2 In the case of Indian Oil Corporation Vs. NECP India Ltd., reported in (2006) (6) SCC 736, the Hon'ble Apex Court while referring to the jurisdiction under Section 482 of the Cr.P.C. has laid down principles for the parties for quashing of the criminal proceedings, which reads as under :-

R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 "It is to seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code, Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

11.3 The Apex Court in case of G. Sagar Suri v.

State of Uttar Pradesh reported in (2000) 2 SCC 636, observed that the Supreme Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. It has been held that jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. Merely because the accused persons had already filed an R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 application in the Court of Additional Judicial Magistrate for their discharge, it cannot be urged that the High Court cannot exercise its jurisdiction under Section 482 of the Code. Though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial.

11.4 Here, in this case too, there are two divergent versions of both the contesting parties with regard to the suit land regarding agreement of sale and the possession of land. The revenue proceedings are referred back for reconsideration, while civil proceedings, though, issues have been framed, Special Civil Suit No.316/2002 has yet not concluded, and the complainant, thus, press upon the R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 proceedings of FIR being C.R.

No.I-215/2017 and FIR being C.R. No.I-45/2016, which have been subsequently raised, when the dispute, which has been raised in C.R. No.I-215/2017, was already at large before the Civil Court.

11.5 Section 482 of the Cr.P.C. envisages three circumstances under which inherent jurisdiction may be exercised namely; (1) to give effect to an order under Cr.P.C. (2) to prevent abuse of process of court and (3) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule, which would govern the exercise of inherent jurisdiction, and no legislative enactment dealing with procedure can provide for all cases that may possibly arise, and the courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. All courts whether civil or criminal possess, in absence of any express provision, as inherent in their R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). While exercising the powers under the section, the court does not function as a court of appeal or revision, and inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.

11.6 This Court, in the present matters, finds that permitting to continue the FIRs would prejudice the interest of the parties and also ultimately affect the proceedings before the Civil Court.

12. The order passed by the Additional Sessions Judge handing over the possession to the applicant i.e. R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 complainant to the matters is erroneous on the face of the record, where the learned Civil Judge has believed the possession of plaintiffs to the suit. Thus, the order dated 08.01.2018 passed by the 2nd Additional Sessions Judge, Surat below Exhibit-34 in Criminal Misc. Application No.3360 of 2015, impugned in Special Criminal application No.679 of 2018, is quashed and set aside.

13. This Court does not find any cause to direct the Investigating Officer. The method to be adopted for seeking FSL report on the document, whether such opinion can be expressed on the laminated document or not, is for the FSL authority to decide. Hence, this Court finds no reason to entertain the Criminal Misc. Application (Direction) No.1 of 2018 in Special Criminal Application No.6429 of 2017. Hence, the same stands disposed of.

14. In view of the above, FIR being C.R. No.I- 215/2017 registered before the Umra Police Station, R/CR.MA/28312/2017 JUDGMENT DATED: 27/04/2023 Surat City and FIR being C.R. No.I-45/2016 registered with Umra Police Station, Surat are quashed and set aside.

(GITA GOPI,J) Pankaj