



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 485/2024

Kishore Singh Mertiya S/o Late Shri Lal Singh Ji, Aged About 55
Years, R/o C-1,c-3, Arihant Colont, Purohito Ki Madri, Udaipur.

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Ajay Singh Mertiya S/o Late Shri Krishna Kumar Singh
@ K.k. Singh @ Kishan Singh, R/o Arihant Colony,
Purohito Ki Madri, Pratapnagar, Udaipur.

----Respondents

For Petitioner(s) : Mr. Ravindra Paliwal.
For Respondent(s) : Mr. Vikram Rajpurohit, PP with
Mr. R.S. Bhati.
Mr. Utkarsh Singh- R/2.

HON'BLE MR. JUSTICE ARUN MONGA

Order (Oral)

17/09/2024

1. Quashing of an FIR No.675/2023, dated 13.08.2023,
registered at Police Station Pratapnagar, District Udaipur for
alleged offences under Sections 420, 467, 468 & 471 of IPC and
all consequential proceedings, is sought herein.

2. The petitioner/accused and the complainant are uncle &
nephew and are involved in a dispute over the inheritance of
estate of complainant's late father.

2.1. Briefly, the relevant facts of the case are as follows:
Respondent No. 2 – the complainant lodged the FIR stating that
his late father was an 'A' class contractor. His uncle, the petitioner,
an advocate, was managing his father's office. Since the father



trusted his younger brother (petitioner - uncle of the complainant), he exploited this trust by obtaining signature of complainant's father on blank papers and even stealing certain documents from the office. After his father's death, the petitioner claimed ownership of Plot No.C-3 and asked the complainant to vacate the property, threatening him with dire consequences. Upon enquiries, the complainant discovered that the plot had been purchased by his father from one Chandra Shekhar Brahmin on December 16, 1998, and that the petitioner had fraudulently substituted his name in place of complainant's father on the documents.

3. In light of these facts, I have heard the learned counsel for the petitioner, the learned counsel for the complainant, and the learned Public Prosecutor.

4. Learned counsel for the petitioner argues that there were actually two plots, No. C-3 and C-4, purchased by both the brothers (petitioner & complainant's father), respectively. Plot No.C-3 was purchased in the petitioner's name, but there was a typographical error in the sale agreement, which was later corrected. When the petitioner sought to register the title (patta) for Plot No. C-3, complainant's father acted as a guarantor in the proceedings. However, the complainant, with the ill intention of taking over both plots, lodged the FIR in question.

4.1. The counsel further submits that the complainant falsely alleged that he discovered the forgery only after the petitioner threatened him. The counsel points out that the petitioner has already filed Suit No. 34/2007 in the court of Civil Judge (Junior



Division) Udaipur against one Khem Singh for illegal construction, by virtue of which complainant was already aware that Plot No.C-3 belonged to the petitioner.

4.2. Additionally, he points out that even the petitioner lodged a cross FIR (No.686/2023) on August 17, 2023, but the police officials are not conducting an impartial investigation in the same.

Therefore, the counsel argues that the present FIR is an abuse of police powers and ought to be quashed.

5. The learned counsel for the Public Prosecutor and learned counsel for the complainant would argue that no interference of this Court is warranted. They submit that once the FIR has been registered, the law will take its own course. Learned Public Prosecutor further adds that the investigation is at nascent stage and if subsequently, it is found that there is no criminal culpability attributed the petitioner, a favourable report will be filed before the competent court and therefore, this petition deserves to be dismissed.

5.1 Conversely, he would argue that in case the petitioner is found to have committed any offence, charge-sheet will be filed in accordance with law.

6. Having heard and perused the case file and the contents of the FIR, I am of the view that the central issue between the two in this case is a family property dispute, which is fundamentally a civil matter concerning inheritance and ownership. The FIR alleges forgery of documents related to the estate of the complainant's late without disclosing and particulars. The inter se rights of the parties herein are to be adjudicated based on documentary



evidence, legal title, and the applicable inheritance laws. Criminal law cannot be invoked to resolve civil disputes. Using the criminal justice system to settle family property issues is misuse of legal process, unless, of course, there is at least clear prima facie evidence of criminal intent.

7. In the case in hand, for criminal charges under Sections 420 (cheating), 467 (forgery of valuable security), 468 (forgery for the purpose of cheating), and 471 (using forged documents), there must be specific allegations demonstrating mens rea, fraudulent intent, and dishonesty. The FIR ex-facie lacks sufficient facts to establish these elements. The petitioner's alleged actions of managing the office and obtaining signatures on blank papers occurred during the period when the father of the complainant was alive and entrusted the petitioner with responsibilities. There is no direct evidence of fraud or criminal intent.

8. The complainant's allegations are vague and belated. He claims to have discovered the alleged forgery only after being threatened by the petitioner, which raises serious doubts about the genuineness of the claim. Moreover, the complainant's inaction for an inordinately long period, despite being aware of the property-related legal proceedings filed by the petitioner in 2007, further weakens the credibility of his accusations. Being aware of the alleged fraud, he ought to have taken legal steps earlier.

9. In another somewhat similar case, this bench has rendered a judgment in **Vijay Sharma v. State of Rajasthan**¹, relevant thereof, being apposite is reproduced here in below :-

¹ Rajasthan High Court - S.B. Cr. Misc.(Pet.) No.5522/2024, dated 21.08.2024





“28.2 FIR was registered under sections 420/406/467/468/471 and 120-B of IPC. Let us analyze the FIR allegations, vis-à-vis the corresponding sections of the IPC invoked therein, in the succeeding sub paras.

A. SECTION 420 :-

Ingredients of section 420 are missing as there is no allegation in FIR-

(i) that complainant was dishonestly induced to deliver any property to the petitioner or to any body else at the petitioner's instance.

(ii) what valuable security or document made, altered or destroyed by the petitioner and how;

Section 420 since requires that the accused dishonestly induce someone to deliver property or alter a valuable security. However, the FIR does not allege that Satish Kumar (the complainant) was induced to deliver any property to Vijay Kumar. There is also no allegation of a "valuable security" being made, altered, or destroyed by the petitioner. The FIR only states that Vijay Kumar manipulated the Will and property records "after" the death of Smt. Bhagwati Devi. There is no act of inducement towards the complainant or anyone else while the property was in their possession. The legal elements of "dishonest inducement" and "property delivery" are missing, which means Section 420 cannot apply. Without these core ingredients, the charge is legally unsustainable.

B. SECTION 406 :-

Ingredients of section 406 are also missing as there is no allegation in FIR for entrustment of property.

Moreover, Section 406-420 are mutually antithetical. In 406 entrustment of property is essential, while in 420, property is obtained by dishonest inducement and cheating, which is otherwise than entrustment.

Section 406 requires that property be entrusted to someone, and then misappropriated or misused. However, the FIR does not allege any entrustment of property to Vijay Kumar or any of the other accused. For a charge of criminal breach of trust, there must be a specific act of giving property to someone with an expectation of proper handling, which is then violated. Here, no such entrustment is mentioned. The property in question was part of a Will, not something that was entrusted to Vijay Kumar by Satish Kumar. In fact, the relationship between the complainant and the accused, as described, does not meet the sine qua non of "entrustment." Without this, Section 406 cannot be invoked.





C. **SECTIONS 467/468 :-**

There are absolutely no particulars and ingredients in the FIR qua the forgery of Will or record for transfer of property to the petitioner. Sections 467 and 468 deal with forgery of valuable documents and records, but the FIR lacks specific details that would satisfy the essential elements of these offenses. The FIR refers to the Will as "fake" and claims manipulation of property records but does not provide specific details of how the Will was forged or altered. It fails to describe who forged the document, how it was forged, or what specific part of the Will was false.

There is no evidence or allegation that Vijay Kumar "created the Will through forgery". The FIR only asserts manipulation after the Will was created, which does not constitute forgery under Sections 467 or 468 IPC. "Clear and specific allegations" are required to sustain a forgery charge, and a vague reference to a "fake Will" does not meet the legal standard necessary to justify these charges.

D. **SECTION 471:-**

When ingredients of forgery are missing, there is no question of commission of offence of using forged documents. Section 471 requires that a forged document is knowingly used as genuine. However, the FIR fails to establish that the Will was forged in the first place. In the absence of ingredients of forgery, there is no basis for claiming that forged document was used. As already stated, allegations qua "fake Will" do not indicate as to how the Will was fraudulently altered or falsified in a manner that makes it legally invalid.

E. **SECTION 120-B:**

Commission of any of the predicate principal offences is not disclosed in FIR. No question would, therefore, arise of the petitioners being a party to conspiracy for commission of any offence. The FIR alleges a conspiracy to defraud, but there is no clear allegation of coordination or agreement between the accused individuals to commit an illegal act. Mere omnibus allegations have been levelled. The FIR claims that Vijay Kumar, Prahlad, and public officials conspired to fraudulently transfer property. However, there are no concrete allegations showing a prior agreement or mutual understanding to commit a crime, which is necessary for a charge under Section 120-B. A mere assertion of conspiracy without supporting material of coordinated actions is not enough to establish the offense. Even an allegation of circumstantial evidence of a meeting of minds, is lacking in this case.





CONCLUSION -

To sum up, the vague and unsupported nature of the accusations are combined with the fact that the dispute in the FIR primarily revolves around the interpretation of a Will and property rights, which is a civil matter rather than a criminal one. The core of the complaint is about the distribution of property following the death of Smt. Bhagwati Devi. Such disputes are to be resolved through civil litigation over inheritance rights, rather than through criminal charges. Criminal law cannot be used to settle civil disputes. FIR in hand seems like an attempt to escalate a family property dispute into a criminal case.”

10. In this case, too, the dispute in the FIR primarily concerns property rights, which is a civil matter. The core allegation relates to the forgery of property documents following the death of the complainant's father. This dispute should be resolved through civil litigation regarding inheritance rights, not through criminal charges. Criminal law cannot be used to settle civil disputes, and the FIR appears to be an attempt to escalate a family property dispute into a criminal case.

11. The allegations in the FIR ex facie do not satisfy the necessary legal elements of the offenses under Sections 420, 467, 468, and 471 of the IPC. Continuing the FIR would subject the petitioner to unnecessary harassment, humiliation, and hardship. It would also waste judicial resources and misuse the state's prosecution machinery on a matter that is essentially civil in nature. Therefore, continuing the criminal proceedings would be an abuse of legal process.

12. In the parting, I may hasten to add that even the belated timing of the FIR suggests that it was filed as a retaliatory measure. The petitioner has been involved in legal proceedings



regarding the property (Suit No. 34/2007) long before this FIR was lodged. The complainant's filing of the FIR only after these civil proceedings indicates that it is being used as a tool to exert undue pressure on the petitioner in the ongoing property dispute.

In ***State of Haryana v. Bhajan Lal***², the Supreme Court laid down guidelines for quashing an FIR, particularly when the allegations do not prima facie disclose any criminal offense or constitute an abuse of the process of law. Applying these principles, the FIR in the present case does not meet the essential legal requirements of the offenses mentioned.

13. Consequently, this is an appropriate case to invoke the court's inherent jurisdiction to prevent the misuse of legal processes and to ensure justice is served.

14. Resultantly, the petition is allowed. FIR No. 675/2023, dated August 13, 2023, registered at Police Station Pratapnagar, District Udaipur, for the alleged offenses under Sections 420, 467, 468, and 471 of the IPC, along with all consequential proceedings against the petitioner, are quashed.

15. Pending application, if any, stands disposed of.

(ARUN MONGA),J.

27-Rmathur/-

Whether fit for reporting : Yes / No

² 1992 Supp (1) SCC 335

