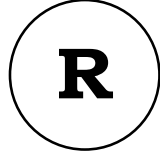


**Reserved on : 26.06.2024**  
**Pronounced on : 05.07.2024**



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05<sup>TH</sup> DAY OF JULY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.5522 OF 2024

**BETWEEN:**

- 1 . SMT. VANITHA  
W/O LATE MANI @ SUBRAMANI,  
NOW AGED ABOUT 54 YEARS,  
R/O NO. 74, 2<sup>ND</sup> CROSS,  
KASTHURIBANAGAR,  
BENGALURU – 560 026.
  
- 2 . VENKATESH M.,  
S/O MANI S., @ SUBRAMANI,  
NOW AGED ABOUT 38 YEARS,  
R/O NO. 57, 3<sup>RD</sup> MAIN ROAD,  
2<sup>ND</sup> CROSS, ASHWATH KATTE ROAD,  
KASTHURIBANAGAR,  
BENGALURU – 560 026.

... PETITIONERS

(BY SRI KIRAN S.JAVALI, SR.ADVOCATE A/W  
SRI CHANDRASHEKARA K.A., ADVOCATE)

**AND:**

- 1 . THE STATE OF KARNATAKA  
BY THE POLICE OF  
CHAMARAJAPET POLICE STATION,

BENGALURU CITY,  
REPRESENTED BY  
SPP HIGH COURT OF KARNATAKA,  
BENGALURU – 560 001.

2 . MILLI T. SHAH  
W/O TARAK SHAH,  
NOW AGED ABOUT 49 YEARS,  
R/O NO. 540, 13<sup>TH</sup> MAIN,  
7<sup>TH</sup> SECTOR, H.R.LAYOUT,  
BENGALURU CITY – 560 102.

... RESPONDENTS

(BY SRI THEJESH P., HCGP FOR R-1;  
SRI DHYAN CHINNAPPA, SR.ADVOCATE A/W  
SRI K.S.PONNAPPA, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE REGISTRATION OF FIR IN CR.NO.118/2024 OF CHAMARAJPET POLICE STATION, BENGALURU CITY, NOW PENDING ON THE FILE OF LEARNED 5<sup>TH</sup> ADDL. CMM COURT, BENGALURU CITY REGISTERED FOR THE OFFENCE P/U/S 420 AND 468 R/W 34 OF IPC.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 26.06.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

The petitioners/accused 1 and 2 are before this Court calling in question registration of a crime in Crime No.118 of 2024 for offences punishable under SectionS 420, 468 and 34 of the IPC.

2. Heard Sri Kiran S.Javali, learned senior counsel appearing for the petitioners, Sri P.Thejesh, learned High Court Government Pleader appearing for respondent No.1 and Sri Dhyan Chinnappa, learned senior counsel appearing for respondent No.2.

3. Facts, in brief, germane are as follows:-

The complainant is the 2<sup>nd</sup> respondent. A complaint comes to be registered by the 2<sup>nd</sup> respondent on 23-05-2024 alleging aforesaid offences against the petitioners. The gist of the complaint is that the parents of the complainant had four daughters. The father of the complainant had executed a Will dated 14-08-2002 in respect of all his properties and dies on 31-07-2008. After the death of the father of the complainant and one of her sister, the revenue entries were completely standing in the name of the

complainant and her sisters. On 21-05-2024 when they sought to verify the records in respect of the property, they come across a Gift Deed dated 19-02-2024 executed by the 1<sup>st</sup> petitioner in favour of the 2<sup>nd</sup> petitioner in respect of property No.12 situated at Aswathkatte Road, Karethimmanahalli, Bengaluru where the father of the complainant was running a Company by name 'Bengaluru Silks Cloth Finishing'. On verification of records and the revenue entries, the complainant comes to know that the father of the complainant had executed a Will dated 01-10-2005 in favour of the husband of the 1<sup>st</sup> petitioner and father of the 2<sup>nd</sup> petitioner. After the death of the husband of the 1<sup>st</sup> petitioner, the 1<sup>st</sup> petitioner executed a Gift Deed in favour of the 2<sup>nd</sup> petitioner and revenue records at the Bruhat Bengaluru Mahanagara Palike ('BBMP') were sought to be transferred in his favour under the signature and seal of the Assistant Revenue Officer pursuant to the said transaction. It is upon this incident, the complainant registers a complaint which becomes a crime in Crime No.118 of 2024. Even before the ink on the complaint could dry, the petitioners are before this Court calling in question registration of the crime.

4. The learned counsel appearing for the petitioners would vehemently contend that the issue is purely civil in nature. There is no question of cheating or forgery, as the husband of the 1<sup>st</sup> petitioner and the father of the 2<sup>nd</sup> petitioner was the recipient of the Will from the hands of one Jitendra D. Engineer, the father of the complainant. Therefore, the property having come to the hands of the 1<sup>st</sup> petitioner, execution of the gift deed by her in favour of the 2<sup>nd</sup> petitioner is no crime. He would further contend that the 2<sup>nd</sup> petitioner has preferred a suit in O.S.No.3493 of 2024 wherein the concerned Court has granted a temporary injunction.

5. Per contra, the learned senior counsel Sri Dhyan Chinnappa appearing for the complainant would refute the submissions to contend that the father of the complainant has made a Will in favour of the members of the family way back in the year 2002 and the Will that the petitioners seek to contend is on the face of it forged, as in the teeth of a Will registered, the Will that is now sought to be projected would pale into insignificance. The signatures on the two Wills also completely vary. The gift deed is executed and a forged tax paid receipt in the name of the 2<sup>nd</sup>

petitioner is generated by using Adobe photo shop. Every detail of the property is the same except the name of the owner. A computerized receipt is also appended to show that the tax paid receipt is in the name of the complainant. Therefore, the earlier one is forged. In the same way, for every year forged documents are produced as tax paid receipts, may be in connivance with the officials of the BBMP. He would submit that these are matters for trial. Forgery, on the face of it, is demonstrable in his submission.

6. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. The relationship between the testator of the Will one Jitendra D. Engineer and that of the father of the 2<sup>nd</sup> petitioner and husband of the 1<sup>st</sup> petitioner was that of master and employees. The father executes a Will in favour of the children. It is a registered Will that is produced as Annexure-R1 to the statement of objections. The schedule to the Will contains five items of properties to be

distributed as found in the Will. The alleged second unregistered Will has surfaced after about 18 years of the registered Will. Though law does not require registration of a Will, the facts are that a registered Will is pitted against an unregistered Will which is completely divergent. In the Will allegedly executed on 01-10-2005 the property is bequeathed in favour of the father of the 2<sup>nd</sup> petitioner and husband of the 1<sup>st</sup> petitioner. Two items of properties are bequeathed therein. The signatures found in the registered Will and in the unregistered Will are undoubtedly at variance even to the naked eye. Therefore, these signatures would require analysis and examination at the appropriate *fora*.

8. Based upon the Will executed in favour of the daughter/complainant all the records of the BBMP stand in the name of the complainant. Plethora of documents are appended to the statement of objections which demonstrate that the property stand in the name of the complainant. A Gift Deed then emerges allegedly executed by the mother/1<sup>st</sup> petitioner in favour of her son/2<sup>nd</sup> petitioner. The Gift Deed is executed on 19-02-2024 and entries of the property are sought to be changed pursuant to the

Gift Deed by an application made to the BBMP. It is then, the complainant comes to know about it. On deeper verification finds deeper fraud. Two documents at Annexures-R8 and R9 if red in tandem, every column is appropriately filled, except the owner's name where there is divergence; it is not SAS based application as could be gathered. Therefore, the connivance of BBMP officials cannot be ruled out in assisting generation of fabricated documents. Many such documents are produced as Annexures to the statement of objections which all to the naked eye would clearly indicate there is nothing amiss. This Court would not straight away pronounce that there is forgery, as it is a matter of evidence.

9. The other offence alleged is Section 420 of the IPC. The documents that are allegedly generated are undoubtedly with a dishonest intention right from the inception. A forgery or cheating of this kind if interdicted in the exercise of jurisdiction under Section 482 of the Cr.P.C. it would be putting a premium on the alleged activities of the petitioners.



10. An act or a fact would give rise to two circumstances – one setting civil law into motion and the other criminal law. Merely because the issue projected is civil, it is no law that this Court in exercise of its jurisdiction under Section 482 of the Cr.P.C. should obliterate the crime. It is a matter of evidence which cannot be deciphered at this stage of the proceedings under Section 482 of the Cr.P.C.

11. The Apex Court from time to time has held that merely because the issue projected appears to be civil, this Court under Section 482 of the Cr.P.C. cannot undertake a mini trial. The Apex Court in the case of **MAHESH CHAUDHARY v. STATE OF RAJASTHAN<sup>1</sup>**, has held as follows:

“ .... .... ....

**11.** *The principle providing for exercise of the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceeding is well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence.*

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<sup>1</sup> (2009) 4 SCC 439

**12. It is also well settled that save and except in very exceptional circumstances, the Court would not look to any document relied upon by the accused in support of his defence. Although allegations contained in the complaint petition may disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. For the purpose of exercising its jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or the complaint petition fulfill the ingredients of the offences alleged against the accused."**

*(Emphasis supplied)*

The Apex Court in the case of **PRITI SARAF v. STATE (NCT OF DELHI)**<sup>2</sup>, has held as follows:

".... ...."

**31.** *In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 406 and 420IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482CrPC for quashing such proceedings."*

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<sup>2</sup> (2021) 16 SCC 142

The Apex Court, in its latest judgment, in the case of **CBI v. ARYAN SINGH**<sup>3</sup>, has held as follows:

“..... ..”

**10.** *From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.*

*(Emphasis supplied)*

Above all, the facts projected in the case at hand are a maze, a maze of forgery. It would be amaze for this Court to exercise its jurisdiction under Section 482 of the Cr.P.C. in the peculiar facts, if

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<sup>3</sup> 2023 SCC OnLine SC 379

exercised, it would run completely foul of the judgment of the Apex Court in the case of **KAPTAN SINGH v. STATE OF UTTAR PRADESH**<sup>4</sup> wherein it is held as follows:

**"9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate**

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<sup>4</sup> (2021) 9 SCC 35

jurisdiction and/or conducting the trial. As held by this Court in *Dineshbhai Chandubhai Patel [Dineshbhai Chandubhai Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683]* in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. **At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.**

9.2. In *Dhruvaram Murlidhar Sonar [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672]* after considering the decisions of this Court in *Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]*, it is held by this Court that exercise of powers under Section 482 CrPC to quash the proceedings is an exception and not a rule. **It is further observed that inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC.** Similar view has been expressed by this Court in *Arvind Khanna [CBI v. Arvind Khanna, (2019) 10 SCC 686 : (2020) 1 SCC (Cri) 94]*, *Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702]* and in *XYZ [XYZ v. State of Gujarat, (2019) 10 SCC 337 : (2020) 1 SCC (Cri) 173]*, referred to hereinabove.

9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarised affidavit of Mamta Gupta Accused 2 and Munni Devi under which according to Accused 2 Ms Mamta Gupta, Rs 25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27-10-2010, the sale consideration is stated to be Rs 25 lakhs and with no reference to payment of Rs 25 lakhs to Ms Munni Devi and no reference to handing over the possession. However, in the joint notarised affidavit of the same date i.e. 27-10-2010 sale consideration is stated to be Rs 35 lakhs out of which Rs 25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused 2. Whether Rs 25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs 25 lakhs as mentioned in the joint notarised affidavit dated 27-10-2010. It is also required to be considered that the first agreement to sell in which Rs 25 lakhs is stated to be sale consideration and there is reference to the payment of Rs 10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.

11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarised affidavit dated 27-10-2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the

*High Court has committed an error. Even the High Court has failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarised affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs 25 lakhs as mentioned in the joint notarised affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only.*

***12. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.***

*13. Even the High Court has erred in observing that original complaint has no locus. The aforesaid observation is made on the premise that the complainant has not placed on record the power of attorney along with the counter filed before the High Court. However, when it is specifically stated in the FIR that Munni Devi has executed the power of attorney and thereafter the investigating officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent witnesses, thereafter whether the complainant is having the power of attorney or not is to be considered during trial.*

*14. In view of the above and for the reasons stated above, the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court quashing the criminal proceedings in exercise of powers under Section 482 CrPC is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now, the trial is to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 CrPC only and the trial court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove. The present appeal is accordingly allowed."*

*(Emphasis supplied)*

If the law as laid down by the Apex Court is pitted to the facts obtaining in the case at hand, what would unmistakably emerge is that, the petition cannot be entertained at this stage, as *prima facie*, forging of documents and taking benefit of such forgery is established on perusal of plethora of documents produced by the respondent before this Court. They all would project intertwined facts, they cannot be detwined in the present proceedings, which are disputed and to be proved by evidence. It is no law that merely because an issue brought before the Court appears to be civil and is standing on the heels of crime, it should be obliterated.



12. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition lacking in merit stands ***dismissed***.
- (ii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioners under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings pending between the parties before appropriate *fora*.

Consequently, I.A.No.1 of 2024 also stands disposed.

**Sd/-  
JUDGE**

bkp  
CT:MJ