

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 1199 of 2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE DIVYESH A. JOSHI****Sd/-**

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

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KANTILAL MAGANLAL SHAH & ANR.  
Versus  
STATE OF GUJARAT & ANR.

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Appearance:

MR PARTHIV B SHAH(2678) for the Applicant(s) No. 1,2

MS SM AHUJA(118) for the Respondent(s) No. 2

MS. MONALI BHATT, LD. ADDL. PUBLIC PROSECUTOR for the

Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI****Date : 12/07/2024****CAV JUDGMENT**

1. At the outset, learned advocate Mr. Parthiv B. Shah submits that during the pendency of the present proceedings, the applicant No.1-Kantilal Maganlal Shah has passed away

and, therefore, he does not press this application and seeks permission to withdraw the same qua the applicant No.1. Accordingly, the present application is disposed of as withdrawn qua the applicant No.1- Kantilal Maganlal Shah.

2. By this application under section 482 of the Code of Criminal Procedure, 1973, the applicant seeks to invoke the inherent powers of this Court praying for quashing of the first information report being Criminal Inquiry Case No.05 of 2014 which is now registered as M. Case No.01 of 2014 before the Jetpur Police Station, Vadodara Rural for the offence punishable under sections 465, 467, 471, 406, 420 and 114 of the IPC.

3. The factual matrix of the case, in a nutshell, is that the dispute involved in the present case is with regard to the ancestral property of the complainant and the applicant. The complainant happens to be the sister of the applicant. It is alleged by the complainant the applicant, with a view to deprive her right as well as the rights of the legal heirs of her one of the brothers Jayantibhai, has forged the signature of the complainant as well as her brother Jayantibhai upon some significant documents including her statement said to have been made by her before the Talati dated 25.07.1975 as well as the notice under Section 135(D) of the Land Revenue Code dated 01.01.1986 and thereby has tried to deprive the rights of the complainant as well as the legal heirs of one of her brothers Jayantibhai from their ancestral property. It is also alleged that at the time of creating such documents, the complainant was even not present before the concerned

authority and was performing her public duties at her office. Even Jayantibhai was not present on such dates and was also performing his duties at District: Vardhagam, Maharashtra. It is further alleged in the complainant, having come to know about such documents being submitted by the applicant before the competent revenue authorities in her name, the complainant immediately obtained copy of the said documents from the concerned revenue authorities and sent the same to the FSL for getting the opinion of the handwriting expert, which was received on 07.03.2014, and as per the said opinion, the signatures upon the documents are forged one and does not belong to the complainant as well as his brother Jayantibhai. It is also alleged in the complaint after getting deleted the name of the complainant as well as her brother Jayantibhai from the revenue record, the applicant has sold out their ancestral property to the third person by way of a registered sale deed, for which, civil proceedings for declaring such sale deed as null and void as well as for permanent injunction were initiated by the complainant as well as the heirs of her brother Jayantibhai, which is pending in the Court of Principal Civil Judge, Pavi-Jetpur. R.T.S. Appeal Nos.65 of 2013 and 77 of 2013 were also filed by the complainant before the Dy. Collector, Chhota Udepur, which is also pending for final adjudication. With this sort of allegations, initially, a written complaint was made by the complainant to the Police Sub-Inspector, Jetpur Pavi Police Station, however, as the Police Sub-Inspector declined to lodge the FIR, the complainant had approached the Dy.S.P., Chhota Udepur, which came to be registered as Outward No.424 and a direction was issued to the concerned police sub-inspector to

initiate inquiry as regards the grievance of the complainant. Thereafter, time and again, the complainant sought details about the status of his complaint from the concerned police sub-inspector, however, he was informed by the police sub-inspector that no further procedure is required to be initiated in respect of her complaint. Hence, the complainant has lodged the impugned complaint.

4. Learned advocate Mr. Parthiv B. Shah appearing for the applicant submits that the complainant and the applicant are brother and sister and some family disputes cropped up between them regarding their ancestral property. He further submits that a civil litigation is also pending before the competent civil court for adjudication. Learned advocate Mr. Shah also submits that the impugned complaint has been lodged by the complainant with oblique and ulterior motive with a sole intention to harass and pressurize the applicant. Even if the entire case of the prosecution is believed to be true and correct, there is no prima facie case made out against the applicant for the offences as alleged in the complaint. Learned advocate Mr. Shah further submits that the alleged incident took place somewhere in the year 1975 and 1986, whereas the impugned complaint came to be lodged in the year 2014, and, therefore, there is a gross and inordinate delay of 40 years in registering the complaint and the complainant has miserably failed to explain about such delay in registering the complaint. The delay on the part of the complainant is fatal to the case of the prosecution and also creates doubt about the credibility and veracity of the facts mentioned in the complaint.

5. Learned advocate Mr. Shah also submits that the entire

dispute is purely civil in nature and an attempt is made to give a cloak of criminal offence to a civil dispute. As per the case of the prosecution, fraudulently, the signature of the complainant was obtained by the applicant upon Section 135(D) notice and on the strength of the said document, an entry was mutated in the record of rights. The said documents cannot be said to be a valuable security and, therefore, no offence as alleged in the complaint is made out and continuation of the proceedings against the applicant would be nothing but a sheer abuse of process of law and, hence, the said proceedings are required to be quashed and set aside. Learned advocate Mr. Shah submits that immediately after registration of the complaint, the applicant-accused has approached this Court, and this Court protected the applicant, however, the investigation was directed to be carried out further. Learned advocate Mr. Shah further submits that during the pendency of the present proceedings, the documents, upon which, false and fabricated signatures of the complainant alleged to have been obtained, were sent to the FSL for the purpose of getting opinion of the handwriting expert, and a report thereof has also been received, a perusal of which, shows that the signatures upon the said documents does not belong either to the complainant or the applicant and, therefore, it cannot be said that the present applicant-accused has played any role in the commission of the alleged offence as the signature of the applicant is also found to be not genuine. Learned advocate Mr. Shah also submits that the applicant is a senior citizen aged about 81 years and cannot be prosecuted merely on the basis of the false and concocted story created by the

complainant after a period of 40 years.

6. In such circumstances, referred to above, learned advocate Mr. Shah prays that there being merit in this application, the same be allowed and the impugned complaint be quashed and set aside.

7. On the other hand, this application has been vehemently opposed by learned advocate Ms. S.M. Ahuja appearing for the original complainant. She submits that the present applicant is the real brother of the complainant and the said fact is clearly mentioned in the complaint. Learned advocate Ms. Ahuja further submits that the complainant, being a daughter, is legally entitled to get her share in the ancestral property of her father. It is an admitted position of fact that when Section 135(D) notice was issued to the complainant as well as to the legal heirs of his brother, the complainant was not present in the Vadodara City and, therefore, the question of making any signature upon 135(D) notice by the complainant does not arise and the same can be said to have been made by the applicant with a malafide intention to remove the name of the complainant as well as the legal heirs of her brother Late Shri Jayantibhai Maganlal Shah. Learned advocate Ms. Ahuja also submits that as and when the complainant asked the applicant about the outcome of their ancestral property, she was assured by the applicant that she will get her share and, therefore, upon such assurance being given by the applicant, she did not ever inquire or verify the title of the property. Learned advocate Ms. Ahuja also submits that so far as the delay in registering the FIR is concerned, the complainant came to know about such forgery somewhere in the month of

November, 2013. As soon as the complainant came to know about the same, she immediately obtained the documents from the revenue authority and sent it to the FSL for getting its opinion. The opinion of the handwriting expert was also received, and as per the said opinion, the signatures on the disputed documents are forged one and does not belong to the complainant. She further submits that when the complainant came to know that the applicant has committed a forgery with the revenue record, she submitted a written complaint to the police sub-inspector, Jetpur Police Station on 22.04.2014, however, after recording the statement of the complainant, the police had declined to register the complaint. Therefore, the complainant was constrained to file a private complaint before the learned JMFC, Jetpur Pavi. So far as the stand taken by the applicant that there is a delay in registering the FIR, the same is not true and correct as the period of limitation would start only when it comes to the knowledge of the person regarding the commission of the offence. In the present case, the committal of such forgery came to the knowledge of the complainant in the month of November, 2013 and after obtaining necessary documents from the revenue authority and then getting it confirmed with the expert, immediately complaint came to be lodged by the complainant. Learned advocate Ms. Ahuja further submits that arguemnt canvassed by the learned advocate for the applicant that notice under Section 135(D) alleged to have been signed by the applicant cannot be said to be a valuable security and, therefore, no offence is made out against the applicant-accused is absolutely incorrect and baseless, as if a notice is issued to a particular

person to decide his or her right in the property, then except that particular person, no other person has any right to sign upon the same and, therefore, by any stretch of imagination, it cannot be said that the act and action on the part of the applicant does not fall within the category of forgery. Not only that, after committing such forgery, the applicant has also created a third party rights upon the disputed property which clearly shows that the said forgery has been committed by the applicant only with a view to gain monetary benefits by selling their ancestral property by keeping the complainant in dark. Learned advocate Ms. Ahuja also submits that the complainant has also preferred suit for permanent injunction and for declaration of the sale deed as null and void, which is pending as on date before the competent court. The applicant herein has also filed an application seeking rejection of the plaint filed by the complainant, which was rejected by the learned Magistrate.

8. In such circumstances, referred to above, learned advocate Ms. Ahuja prays that there being no merit in this application, the same be rejected.

9. Learned APP Ms. Monali Bhatt appearing for the respondent-State submits that she has adopted all the arguments canvassed by learned advocate Ms. Ahuja and would further submit that the documents available on record clearly show that the applicant is the direct beneficiary of the said transaction. She further submits that while issuing notice, this Court protected the applicant, however, the investigation was directed to be proceeded further, and accordingly, the



investigation was carried out, and during the course of investigation, the disputed documents were sent to the FSL for handwriting expert's opinion, and as per the expert's opinion, the signatures of the complainant are found to be forged one and, therefore, a prima facie case of cheating and forgery is made out against the applicant, and as such, at this stage, the investigation is required to be proceeded further for the purpose of finding out as to who has actually created such forged documents and produced before the concerned authority. Learned APP Ms. Bhatt further submits that permitting the investigation to go on would not jeopardize the liberty of the applicant as he is already on anticipatory bail. Under the circumstances, the learned APP prays that the present application may not be entertained.

10. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the F.I.R. should be quashed.

11. Before advertng to the submissions made on behalf of the parties, it will be apposite to refer to the relevant case laws.

12. In *Krishnan vs Vijay Kumar* [2001 (8) SCC 645], the Hon'ble Supreme Court held that in almost all cases of cheating and fraud in the whole transaction, there is generally some element of civil nature. In that case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. It was held that the proceedings could not be quashed only because the

respondents there in, had filed a civil suit with respect to those documents. In a criminal Court the allegations made in the complaint have to be established independently, notwithstanding, the adjudication by a civil court. If the complainant had failed to prove the allegations made by him in the complaint the accused would be entitled to discharge but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, 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. The civil proceedings as distinguished from the criminal action have to be adjudicated and concluded by adopting separate yard sticks. In criminal cases, the onus is, of proving the allegations beyond reasonable doubt, which is not applicable to civil proceedings which are decided merely on the basis of probabilities with respect to the acts complained of.

13. In *Lal Muni Devi (Smt.) Vs. State of Bihar*, (2001) 2 SCC 17, the Hon'ble Supreme Court held that there could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it was also held that it is also settled law that facts may give rise to a civil claim and also amount to an offence and merely because a civil claim is maintainable that does not mean that the criminal complaint cannot be maintained. The Hon'ble Supreme Court held that, as in that case, the High Court did not state that on

facts no offence was made out, the criminal prosecution could not have been quashed merely on the ground that the dispute was a civil wrong.

14. In *Kamala Devi Agarwal Vs. State of West Bengal*, AIR 2001 SC 3846, the Hon'ble Supreme Court on consideration of the earlier authorities on the point, held, that 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. I may quote some of the relevant paragraphs of the said decision as under:-

*"9. Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending. After referring to judgments in State of Haryana v. Bhajan Lal , Rajesh Bajaj v. State NCT of Delhi this Court in Trisuns Chemical Industry v. Rajesh Agarwal & Ors. [1999 (8) SC 687] held:*

*"Time and again this Court has been pointing out that quashing of FIR or a complaint in exercise of the inherent, powers of the High Court should be limited to very extreme exceptions (vide State of Haryana v. Bhajan Lal and Rajesh Bajaj v. State NCT of Delhi ).*

*In the last referred case this court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations:*

*"10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating were committed in the course of commercial and also money transaction."*

*17. 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 of 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."*

15. Now taking into consideration the facts of the present case in the light of the aforesaid principles laid down by the Hon'ble Supreme Court, it appears specific allegations are made in the complaint by the complainant as regards the forgery being committed by the applicant. Prima facie, the said allegations appears to be not only on assumption and presumption, but on the basis of some corroborative evidence obtained by the complainant in the form of opinion of the handwriting expert. The parties to the present proceedings are real brother and sister. Clear and specific allegations are made by the complainant sister that she has been deprived of her legitimate rights from her ancestral property by the applicant who happens to be her real brother. The allegations are to the effect that the applicant, by forging the signature of the complainant as well her late brother Shri Jayantibhai Maganlal Shah, has got deleted their names from the revenue record and then sold the said property to the third party, without even informing or getting consent of the complainant. The grievance of the complainant is that not a single penny has been paid to her by the applicant from the said transaction and the

applicant alone has pocketed the entire money. She, being a coparcener in the property, is legally entitled to get her share from the inherited property of her father.

16. It also emerges from the record that there was no ill-will between the siblings. The entire dispute arose when the complainant came to know that her ancestral property has been sold out by the applicant even without taking her into confidence by forging her signature as well as the signature of another coparcener, namely, Jayantibhai Maganlal Shah. Till then, she was under impression that their ancestral property is still running in their names and she will get her share from the same in future, which assurance was also given by the applicant. However, to the utter shock and surprise of the complainant, when she came to know that their ancestral property has been sold out by the applicant, she wondered that how without any consent being given by her, the said property has been sold out by her brother as she is having equal share in the inherited property of her father as per the Hindu Succession Act. Therefore, she obtained the relevant revenue records whereupon she came to know that her signature has been forged by the applicant and thereby got their names deleted from the revenue record. Not only that, after getting deleted the name of the complainant from the revenue record, the applicant has sold out the property to the third party upon receiving amount of consideration. Therefore, as per the rights given by the statute itself, she is entitled to get his share prior to disposal of their inherited property or even is entitled to get his part of money equivalent to his share from any transaction that has been taken place in respect of

their ancestral property. In the present case, she has not received any share either before or after the disposal of the property. Therefore, she preferred a civil suit before the competent court as well as also initiated criminal proceedings by registering a complaint.

17. Considering the peculiar facts and circumstances as well as the documents produced on record, *prima facie*, it appears that there are elements of forgery exist in the present case. The opinion of the handwriting expert is also on record, opining the signature of the complainant on the disputed documents as forged one. Therefore, such is the opinion, then it might be that somebody has made the forged signature upon those set of documents by impersonating himself as the complainant and/or her late brother Jayantibhai Maganlal Shah, on the basis of which, the names of the complainant and her late brother have been deleted from the revenue record. Therefore, I am of the *prima facie* opinion that the same is required to be thoroughly investigated and the Court should be loath in exercising its inherent power in such type of cases.

18. I am aware about the civil proceedings going on between the parties as also the fact that the applicant is a senior citizen now aged about 81 years. But what refrains me from exercising the inherent powers is the fact that a helpless daughter, after the death of his father, has been fighting for her legitimate rights over her ancestral property alleged to have been deprived by his own brother by creating some forged and fabricated documents. In our country, the only person who can take the place of a father after his death is the

brother whether younger or elder. In our culture, brothers are being considered as next to father and, therefore, they should keep the tendency of giving to the sisters, if nothing, then at least her legitimate rights. Moreover, mere pendency of the civil proceedings does not have any bearing to the criminal proceedings as both are totally distinct and different form of proceedings to be tried in altogether a different court and, therefore, both the proceedings can go on simultaneously irrespective of whatever outcome may be. Thus, considering the allegations levelled in the complaint as well as the facts gathered from the record, I am of the considered opinion that the investigation should go on so that the true and correct facts can be brought on record.

19. So far as the submission made by the learned counsel for the applicant that there is a delay of almost 40 years in registering the complaint by the complainant for which no plausible explanation has been given, is concerned, this Court may record that perusal of the present complaint itself explains such delay. In the complaint it has been submitted by the respondent that she came to know about such fraud in the year 2013, and immediately having come to know about the same, first she obtained all the disputed documents from the revenue authority and then sent it to the FSL for getting the expert's opinion and, thereafter, approached the concerned police station to register the complaint. However, as the police did not pay any heed to the request of the complainant, she filed the impugned complaint before the Magistrate. Therefore, it can be said that it was a procedural

delay and not an intentional one.

20. Even otherwise, the Hon'ble Supreme Court of India in the case of State of H.P. Vs. Gian Chand reported in (2001) 6 SCC 71 has opined that the entire prosecution story could not be disbelieved on the ground of delay. Relevant paragraph 12 of the aforesaid judgment is as follows:

“Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.”

21. For the foregoing reasons, the present application fails and is hereby dismissed. Notice stands discharged.

22. It is needless to clarify that the observations made in this judgment are relevant only for the purpose of the FIR in question and the consequential criminal proceedings. None of the observations shall have any bearing on any of the pending criminal prosecutions or any other proceedings.

**(DIVYESH A. JOSHI,J)**

VAHID