

2026 LiveLaw (SC) 200

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
PAMIDIGHANTAM SRI NARASIMHA; J., MANOJ MISRA; J.**

February 25, 2026

CRIMINAL APPEAL No. 1127 OF 2026 (Arising out of SLP (Crl) No. 6670/2021)

VANDANA JAIN & ORS. versus THE STATE OF UTTAR PRADESH & ORS.

Criminal Procedure – Quashing of FIR – Indian Penal Code, 1860 – Sections 406, 420, 467, 468, and 471 – Civil Dispute given a criminal cloak – Abuse of process of law – The Supreme Court quashed an FIR lodged 11 years after the execution of a Joint Venture Agreement (JVA), holding that the dispute was essentially of a civil nature - While considering a prayer to quash an FIR, allegations are ordinarily taken at face value to assess if a prima facie cognizable offence is made out - where the cause is essentially civil, the Court must assess whether it has been given a "cloak of criminal offence." - In such cases, the Court is not restricted to the FIR's contents but may consider admitted facts and documents recited therein, such as the JVA - A delay of 11 years in lodging the FIR (JVA dated 2010; FIR lodged 2021) indicates the absence of dishonest intention from the inception. If a stark dishonest intention existed, it would have been reported promptly. [Relied on: *Paramjeet Batra v. State of Uttarakhand and others*, (2013) 11 SCC 673; Para 15, 25-27]

Cheating – Section 420 IPC – Absence of False Representation – No offence of cheating was made out as there was no false representation in the JVA - The agreement did not contain a specific statement that "no litigation was pending"; rather, it provided an indemnity to the second party for any loss due to disputes - The representation that no "restraint order" existed was not shown to be false. [Paras 20-26]

Criminal Breach of Trust – Section 406 IPC – Non-refundable Security Deposit – The allegation regarding non-refund of security money does not constitute a criminal offence when the JVA stipulates that the deposit is non-refundable and only adjustable against future sale proceeds - Non-fulfillment of such contractual obligations gives rise to a civil cause of action, not a criminal one. [Para 22 - 28]

Forgery – Sections 467, 468, 471 IPC – Document not traceable in records – Merely because a document (such as a Tehsildar's letter) is not traceable in official records 11 years after its purported issuance, it cannot be deemed "forged" or "false" under Section 464 IPC. Official records are not always maintained in perpetuity. [Para 24]

For Petitioner(s) Mr. Pradeep Kant, Sr. Adv. Mr. Divyanshu Sahay, Adv. Ms. Shradha Narayan, Adv. Ms. Nitya Aggarwal, Adv. Mr. Shubham Kumar, Adv. Mr. E.C. Agrawala, AOR.

For Respondent(s) Mr. Shaurya Sahay, AOR Mr. Aditya Kumar, Adv. Ms. Shweta Yadav, Adv. Mr. Devvrat, AOR Mr. Devesh Kumar Agnihotri, Adv. Ms. Swati Setia, Adv. Mr. Pabitra Pal Chowdhury, Adv.

J U D G M E N T

MANOJ MISRA, J.

1. Leave granted.
2. This appeal impugns the judgment and order of the High Court of Judicature at Allahabad¹ dated 30.07.2021 passed in Misc. Bench No. 16314 of 2021 whereby the writ

¹ High Court

petition of the appellants seeking quashing of FIR ² No.0112 of 2021, dated 14.03.2021, lodged at Police Station (for short, P.S.) Hazratganj, District Lucknow, under Sections 406, 420, 467, 468 and 471 of the Indian Penal Code, 1860³, has been dismissed.

FACTS

3. Vandana Jain (appellant no. 1), Divya Bhatia, Siddharth Jain (appellant no.2) and Kanishk Jain (appellant no.3), described as first party, entered into a joint venture agreement⁴ dated 16.08.2010 with Motor General Sales Ltd. (Respondent No.2), described as second party. As per the terms and conditions of the JVA, the first party gave development rights to the second party for developing land i.e., Plot No. 61 (Old No. 276A), admeasuring 1500 Square Yards, bearing Municipal No. 3A/207 & 208, Azad Nagar, Kanpur. Under the agreement, the second party was required to construct residential units/apartments over the land at its own cost. The capital contribution of the first party was the land which was valued at Rupees Two Crores Fifty Lacs Only. The project was to come up as a single unit in which both first and second party had 50% share.

4. Under the JVA, the second party undertook to complete the project within two years, upon fulfillment of certain conditions such as (i) sanction of plan by Kanpur Development Authority⁵; and (ii) handing over of vacant possession of the site to the second party.

5. Clause 5 of the JVA, which is of some relevance, is being reproduced below:

“SECURITY FOR DUE COMPLIANCE OF AGREEMENT

For due performance of this Joint Venture Agreement, the Second Party will advance Rs. 10,000,000 (Rupees One Crore only) as security money to the First Party on receiving the physical possession of the vacant property of which second party will be giving Rs. 50,00,000/- (Rupees Fifty Lacs only) lacs in advance and there after the balance amount to be given to the first party within 3 months. However, if the second party is not in position to give the balance of the funds from his own sources within 3 months, then the first party will be entitled to retain the booking amounts to the extent of Rs. 50,00,000/- (Rupees Fifty Lacs only).

This amount of advance will be adjusted from the share of the first party from sale proceeds of the said flats in the complex of the share of the first party.”

6. Clause 7 of the JVA provided for arbitration in the following terms:

“ARBITRATION:

All disputes or differences relating to breach of contract or damage or otherwise in connection with the terms of this contract during or after completion or interpretation of the terms etc. among the parties or their prospective purchasers the same shall be referred for the arbitration under Indian Arbitration Act in force. Neither party will have any right to approach Civil Court pertaining to arising out of any matter directly or indirectly of this agreement of Joint Venture without resorting to this arbitration clause. The award of arbitrator shall be final, conclusive and binding upon the parties.”

7. For certain reasons, not necessary to be disclosed in these proceedings, the JVA could not materialize, resulting in dispute between the parties. In consequence, on 14.03.2021, the second respondent lodged the impugned FIR implicating the appellants along with Divya Bhati as accused.

² First Information Report

³ IPC

⁴ JVA

⁵ K.D.A.

The First Information Report

8. In the FIR it was, inter-alia, alleged: (a) that despite receiving Rs. 1 Crore as security for due compliance of the JVA, the accused did not hand over possession of the land; (b) that despite repeated demands for return of the advance money, the accused did not return the same; (c) that the accused made a false promise that the land was free from litigation; (d) that the accused had forged documents to deceive the complainant; (e) that, later, it was discovered that in respect of the land concerned, the accused were in litigation with one Indira Devi Kanodia and the said litigation had been pending since before the date of the agreement, therefore, by suppressing this fact, the accused cheated the complainant. On these allegations, the FIR was registered under Sections 406, 420, 467, 468 and 471 I.P.C.

Challenge to the FIR

9. Aforesaid FIR was challenged by the appellants before the High Court through W.P. No. 16314 (M/B) of 2021. It was, inter-alia, pleaded: (a) that plot No.61 was bought by Nand Lal Gupta (predecessor-in-interest of the appellants) from Suraj Bux Singh (i.e. the original owner of the land) in 1967 whereafter part of the land was transferred to Urmila Agrawal and Vasudha Agrawal, daughters in law of Nand Lal Gupta; (b) in the year 1972, Nand Lal Gupta constructed a boundary wall on the said land, which was illegally demolished by Kanpur Nagar Mahapalika; (c) as a result, Nand Lal Gupta instituted Suit No. 245 of 1972 claiming damages from Kanpur Nagar Mahapalika; (d) those proceedings were contested by Mahapalika by claiming that the land had been acquired in the year 1945-46; (e) however, on 28.04.1979, the aforesaid suit was decreed holding that plaintiff is the owner in possession of the land in dispute forming part of plot No. 61, New Jeora Nawabganj and defendant(s) have no right, title or interest in the land; (f) a Civil Appeal No. 371 of 1979 was filed by Nagar Mahapalika and K.D.A. before the District Judge, Kanpur, which was dismissed on 25.04.1981 thereby confirming the finding(s) returned by the trial court; (g) said decree has attained finality; (h) on 29.06.1987, House No. 3A-207, located over Plot No. 276A (old), having new No. 61 at Jeora Nawabganj, Kanpur, was bought by Sushila Devi Jain *vide* sale-deed dated 29.06.1987 from Smt. Urmila Agarwal; (i) likewise, J.C. Jain (predecessor-in-interest of the appellants) bought a portion of old plot No.276A (new No.61) *vide* saledeed dated 29.06.1987 from Smt. Vasudha Agarwal; (j) on death of Sushila Devi Jain and J.C. Jain, the appellants became owner of the property; (k) on 16.03.2000, Indira Devi Kanodia, who owned a plot adjoining the land in question, requested K.D.A. to deliver the possession of the plot allotted to her sometime in the year 1957; (l) pursuant thereto, K.D.A., despite the decree in Suit No. 245 of 1972 holding that no such plot of land was acquired by K.D.A., projected that the plot in question was actually plot no. 46 even though the two plots (i.e., plot nos.46 and 61) were far apart; (m) when the aforesaid fact came to the knowledge of the appellants, they represented the matter to K.D.A.; (n) in response, on 21.11.2001, Indira Devi Kanodia instituted Suit No. 1432 of 2001 for protecting her possession; (o) in the said suit, the appellants filed an Application for impleadment, which was allowed on 07.08.2002; (p) aggrieved therewith, Indira Devi Kanodia filed a revision which was dismissed on 02.12.2005; (q) against that order, a writ petition was filed which too was dismissed by order dated 20.08.2008; (r) thereafter, on 23.04.2009, Indira Devi Kanodia moved an application seeking amendment in the plaint to include plot No. 61, which was dismissed by the trial order *vide* dated 09.11.2009, against which no further proceedings were drawn.

10. On strength of the aforesaid facts, the appellants sought to develop a case that their title over the land bearing plot no. 61 (new), Jeora Nawabganj was not disputed; dispute,

if any, was settled in an earlier suit instituted by their predecessor-in-interest; party disputing appellant's interest, namely, Indira Devi Kanodia, claimed allotment through K.D.A. and initially in her suit, she had alleged that the plot allotted to her was not part of plot No. 61. In these circumstances, the appellants claimed that they have not made any false representation about their title over the land in question. The appellants also stated that there was an arbitration clause in the JVA therefore, on a dispute arising from the JVA, recourse should be had to the arbitration clause. Hence, FIR was nothing but abuse of the process of law.

High Court's Order

11. High Court dismissed the writ petition *in limine*, vide impugned order, without considering whether the facts spelt out in the FIR disclosed a pure civil cause of action as also whether the allegations made, make out an offence *qua* preparation of a false document.

12. We have heard learned counsel for the parties and have perused the record.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

13. On behalf of the appellants, it has been submitted:

(i) By merely making bald allegations that appellants had made false representation to dupe the complainant into entering a development agreement, a dispute civil in nature has been given color of a criminal case.

(ii) It is a pure civil dispute because there is no misrepresentation which is evident from the fact that there is no specific statement in the JVA that no litigation *qua* the land is pending in any court.

(iii) The allegation that appellants prepared a false document of no encumbrance on the property is not substantiated by any allegation in the FIR; and

(iv) The JVA is of the year 2010 whereas the FIR has been lodged in the year 2021, after 11 years, when even a civil suit had become barred by limitation. Therefore, allowing such FIR to exist would be nothing but abuse of the process of law.

SUBMISSIONS ON BEHALF OF THE COMPLAINANT AND THE STATE

14. On behalf of the complainant and the State, it has been submitted:

(i) At the stage of considering prayer to quash an FIR only the allegations therein are to be considered and therefore, various averments made in the writ petition, in the form of defense, are not to be considered; and

(ii) As the FIR discloses commission of an offence, the matter requires investigation therefore, the High Court was justified in dismissing the petition *in limine*.

DISCUSSION

15. At the outset, we may observe that while considering a prayer to quash an FIR, ordinarily the allegations made therein are to be taken at their face value to assess whether *prima facie* commission of a cognizable offence is made out or not. However, where the cause espoused in the FIR is essentially of a civil nature, while addressing a quashing petition, the Court must have regard to the attending circumstances and assess whether it has been given cloak of criminal offence⁶ and whether proceeding further on the FIR would amount to the abuse of the process of the court/ law. In making such

⁶ See *Paramjeet Batra v. State of Uttarakhand and others*, (2013) 11 SCC 673, para 12

assessment, the Court may consider not only the contents of the FIR but also the admitted facts / documents recited therein.

16. In the case on hand, a perusal of the FIR would indicate that existence of JVA is admitted. The thrust of the allegations is on: (a) false representation by the appellants about their title to the property/land including suppression of litigation pending in respect thereof; (b) non-fulfilment of contractual obligations; (c) non-refund of security money; (d) furnishing false document. We shall deal with each of the above allegations.

The Joint Venture Agreement

17. There is no dispute between the parties that they had executed a JVA dated 16th August 2010. The dispute between the parties have arisen from the said JVA. In such circumstances, as it is part of the record, it would be useful to refer to its relevant clauses. The said agreement introduces the property in question in the following manner:

“BRIEF HISTORY OF THE PROPERTY

WHEREAS previously the owner of the property was Sri Nand Lal Gupta, Father in Law of Smt. Urmila Agarwal w/o Shri Mohan Lal Agarwal r/o 46/39 Khoya Bazar, Kanpur, Shri Nand Lal executed a Patta and got it registered in the Tehsil Kanpur. Wherefrom Smt. Urmila Agarwal becomes the real owner of plot bearing (Old No. 276-A) New No. 61, Jeora Nawabganj, Kanpur admeasuring 10 biswas (1195 Sq. Yds.) more specifically delineated in the enclosed site plan shown by colour green and her name stands mutated in the revenue record as the owner/bhumidhar of the said plot. The plot is situated in the metropolitan area of Kanpur Nagar.

WHEREAS Sri Nand Lal is the Father-in-Law of Smt. Vasudha Agarwal w/o Shri Vinod Agarwal r/o 46/39 Khoya Bazar, Kanpur. Shri Nand Lal executed a Patta and got it registered in the Tehsil Kanpur. By which Smt. Vasudha Agarwal becomes the real owner of plot bearing (Old No. 276-A) New No. 61, Jeora Nawabganj, Kanpur admeasuring 305 Sq. Yds. more specifically delineated in the enclosed site plan shown by colour red in plan annexed and her name stands mutated in the revenue record as the owner of the said plot. The plot is situated in the metropolitan area of Kanpur Nagar.

Both Smt. Urmila Agarwal and Smt. Vasudha Agarwal have raised construction and a house was made and assessed to the Municipal Tax, H. No. 3A/207 & 208, Azad Nagar was allotted to the house property.

WHEREAS Smt. Urmila Agarwal has sold her portion of land (1195 Sq. Yds.) together with construction thereon to Smt. Sushila Devi Jain w/o J.C. Jain r/o Munney Lal Kagzi Kothi Yahiangang, Lucknow, *vide* Sale Deed registered with Sub Registrar Kanpur at Bahi No. 1 Zild No. 4443, Page No. 250 to 254 at original SI. No. 13483 on 7th March 1988. Similarly, Smt. Vasudha Agarwal has sold her portion of Land (305 Sq. Yds.) together with construction thereon to Shri J.C. Jain, Karta of J.C. Jain (HUF) r/o Munney Lal Kagzi Kothi Yahiangang,

Lucknow, *vide* Sale Deed registered with Sub Registrar Kanpur at Bahi No. 1 Zild No. 4478, Page No. 66 to 72 at original SI No. 13481 on 7th March 1988. Both late Shri J.C. Jain and Smt. Sushila Devi Jain have willed the land to their grandchildren Smt. Divya Jain, Shri Siddharth Jain and Shri Kanishk Jain who are now the joint owners of the said property.

WHEREAS in a family settlement Smt. Divya Jain, Shri Siddharth Jain and Shri Kanishk Jain have all gifted 1/3rd each of their share to their mother Smt. Vandana Jain who is now the owner of 1/4th of the said plot.

AND WHEREAS

1. In the present global scenario and in order to contribute in the planned development of the Kanpur City, the First Party has decided to develop by erecting residential units/apartments over the land of premises built over the Plot No. 61 (Old No. 276-A), Jeora Nawabganj, Kanpur.

2. The Second Party who is in Automobile line and having financing arrangements and being interested in entering into construction Business expresses its interest to develop the said property jointly with the First Party.

3. The First Party between themselves have decided to develop the property jointly with the Second Party by erecting residential units or apartments over aforesaid premises subject to terms and conditions settled mutually, as enumerated herein below.”

18. The relevant provisions in the JVA, governing rights and obligations of the parties, are found in clauses 1 to 7, which are reproduced below:

“NOW IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS

1. This contract for joint venture agreement will be effective from 16.08.2010

2. Contractual obligations and right of the second party

2.1 That the Second Party will construct the residential units or apartments, as per intended objects, in conformity with the plans, drawing, specifications and elevations, duly approved by the Kanpur Development Authority, by its own funds, after demolition of the existing structure and that the First Party will be assisting the Second Party in getting works smoothen up as the Second Party has less experience in present.

2.2 That in pursuance of said contract and consideration to erect the units or residential apartments, over the subject land, out of its own funds and resources, and in lieu thereof the Second Party will have 50% undivided share of the land and construction (units or apartments) thereon, open and covered car parking space, terrace and undivided share in the common area and facilities, etc. of project.

2.3 That the Second Party will be fully empowered to advertise, display signboards, publish the project in any manner whatsoever at its cost, and to book, sell the flats, parking etc. The Second Party will be authorised to collect advance Booking amounts as may be decided by both the parties and will use the same towards construction of the said Building along with its funds.

2.4 That in pursuance of this Joint Venture, the Second Party will be fully empowered and authorised to execute sale deed/deeds or any other documents in respect of units or flats consisting of super built up area, common area facilities, open and covered parking space, terrace of the building etc. and in such sale deeds the first party will also join for the sale of undivided share of land underneath, in favour of the prospective purchasers and to get them registered, in the office of Sub-Registrar, Kanpur or to deal with its share in construction as absolute owner, without any further consent of the First Party.

3. **PERIOD FOR COMPLETION OF PROJECT:**

3.1 That the Second Party undertakes to complete the construction of the project within 2 years, after fulfilment of following statutory permission:

a) Sanction of plan by Kanpur Development Authority. (After obtaining all the requisite permission from concerned authorities.) The said assignment is agreed to be taken up by the first party and to be given to the second party

b) With the mutual consent of the parties said period for completion of project will be further extended.

3.2 The peaceful and vacant possession of the premises will be handed over to the Second Party on 16.08.2010 for achieving intended objects, contained therein.

3.3 Any delay, in carrying out the construction, due to force majeure causes/beyond the control of Second Party, the affected period shall not be taken into account, while calculating the period of completion of project, and the affected period shall be considered as idle period.

3.4 In case of any dispute with regard to the title of the First Party or due to other impediment caused by the First Party, etc. the Second Party is unable to carry out the construction of the

project, the affected period in the dispute will not be considered, while calculating the period of completion of the project. Apart from it, the Second Party will have lien and right to retain and utilize the constructed portions in the subject land, together with land underneath therein, to the extent of the amount and other incidental expenses incurred by him in the said project.

4. THE CONTRACTED OBLIGATIONS AND RIGHTS OF FIRST PARTY:

4.1 To assist the Second Party for obtaining the

Sanction of map and other approvals from Kanpur Development Authority, Fire N.O.C., earthquake resistance, and other permissions from statutory bodies, at the cost of Second Party. However the First Party will have to pay all dues, in respect of subject land, up to the date of handing over the possession of the same to the Second Party. If in case any kind of dues, taxes etc. are discovered unpaid in future, it will be perpetual and exclusive liability of the First Party to pay it on demand to the Second Party or to statutory bodies, as the case may be.

4.2 That the First Party assure and covenant to the Second Party that the said premises, is not attached in Banks or Government Department for the Income Tax demand or sales tax dues etc. nor it will be attached for any financial liability in future. However, in future if any financial liability demand, Taxes etc. of First Party arises it will be realized from the portion of the land and building of First Party's share only and will not be recoverable from the share of the Second Party.

4.3 That the First Party indemnify the Second Party in all respect with regard to perfect and good marketable title over the subject land and assure that the First Party has not been restrained by any court order or income tax or other government department or otherwise to enter into this Joint Venture Agreement.

4.4 (a) That since the First Party has purchased the premises vide two separate sale deeds apportioning the plot no.61 (Old No.276-A) of Jeora Nawabganj, Kanpur, therefore if KDA/corporation or other government department demands any sub-division charges, penalty, fee etc. the same shall be paid by the First Party only.

(b) That it is also decided that the extra construction over and above the permissible FAR may be raised after purchasing the permissible FAR from Kanpur Development Authority, however, the purchasing cost of the FAR will be borne and beared by the parties in their proportionate ratio.

4.5 The First Party will also be fully empowered to advertise, display signboards, publish the project in any manner whatsoever at its cost, and to book, sell the units or flats, parking etc. of its share and to receive the earnest money, sale consideration from the prospective purchasers in respect of units or super built up area of flats, common area and facilities, terrace open and covered, parking etc. together with undivided share in the land and give them valid receipts. And execute the deed of conveyance together with Second Party in favour of intending purchasers. However, the First Party will be paying off the advance so received in proportion to the Advance already given by the Second Party to the First Party.

4.6 That First Party will assist the party No.2 in all construction works as well as in negotiating sales of the flats and all other aspects where assistance required as it being the first project of the second party.

5. SECURITY FOR DUE COMPLIANCE OF AGREEMENT

(Already extracted in paragraph 5 of this judgment)

6. GENERAL

6.1 By virtue of this Joint Venture Agreement, the Second Party is empowered and authorised to submit any application, letter, bond etc. pertaining to approval, sanction and other activities, with regard to the development, at site and completion of the project. The First Party will be cooperating fully to Second Party for these purposes.

6.2 The Second Party shall indemnify to the First Party in respect, of all claims, damages or expenses payable in consequence to any injury to any employee or workmen, while in or upon

the said premises and claims of the prospective purchasers up to handing over of the possession of units or flats.

6.3 All Taxes, dues in respect of subject land upto the date of this agreement as per this Joint Venture Agreement will be borne by the first party, similarly, all taxes, charges for consumption of water and electricity used, during construction of building and thereafter till handing over possession of the share of the first party, will be paid by the second party.

6.4 That the penalty, compounding fee, if any, occurs in the project due to deviations from the sanction plan shall be shared proportionately by first and second party.

6.5 That during the course of construction or thereafter, the first party and the second party will not create any encumbrances or charges over the subject land in the manner of what so ever nature, which may be prejudicial to the interest of the both or its prospective purchases.

6.6 That the name of the proposed residential apartment will be _____ which name cannot be changed by any parties of this agreement, their prospective purchases or subsequently formed associations of the unit/flat owners.

6.7 This agreement shall not be deemed to constitute a partnership, between the parties, as such, all taxes liability, including income tax, sales tax, capital gain taxes, will be the individual and the independent liability of the parties concerned.

6.8 After execution of this Joint Venture Deed of contract, the parties may with mutual consent, in writing alter, change, or modify any of the conditions, enumerated here and above. In such case, without affecting the entire contract, up to the extent of modifications the contract will be deemed to be novated and parties will be bound to adhere the same.

6.9 That after development of the subject land, in pursuance of this Contract of Joint Venture, the Second Party will become the absolute owner of the units or flats, open and covered car parking spaces, roof etc. and will acquire the status of co-owner in the common area, facilities, and proportionate undivided share, in the subject land upto the extent of its share. Hence by virtue of the provisions contained in Section 32 of the Indian Registration Act, the Second Party will have absolute and unrestricted right, to execute agreement to sell/sale deed etc. for construction raised by it and to receive entire agreed sale consideration in tis name, give them valid receipt and get the sale deeds registered in respect of its share together with First Party for undivided share in the land notwithstanding the execution and registration of any Power of Attorney.

6.10 That during construction of building or thereafter if First Party creates any type of hindrances, obstructions or unwanted intervention by which the construction activities or sales of flats is stopped/hindered. Or First Party commits any breach of this agreement, the First Party will pay 12% interest to the Second Party on/over the entire expenses incurred by the Second Party in the project upto restoration of normalcy. The said amount may be realized by the Second Party from the immovable and movable assets of the First Party.

6.11 That irrespective of the covenant contained in clause 6.9 above for due performance of this contract the First Party No. A (i), (ii), (iii) have executed a General Power of Attorney in favour of Shri Kanishk Jain, authorising him to sell dispose of the units or flats etc. falling in the share of the Second Party, consisting of units/flats, open and covered car parking, roof, common area facilities together with undivided share in the land underneath.

6.12 The First party assure to the second party and undertakes that under no circumstances said General Power of Attorney will be revoked by the First Party No. A (i) till execution of all the sale deeds in favour of prospective purchasers of the Second Party's share.

6.13 That this deed of contract is being executed in duplicate and both will be treated as original.

6.14 That this Joint Venture Agreement will remain enforce, until the subjected land is fully developed, and sold upto the intent of the parties.

7. **ARBITRATION:**

(Already extracted in paragraph 6 of this judgment).”

19. A careful reading of the aforesaid clauses would reflect that the first party, which means the appellants herein, had assured -- (a) that the premises is not attached in Banks or Government Department for Income Tax demand, Sales Tax dues etc. nor it will be attached for any financial liability in future; (b) that if any financial liability demand, taxes, etc. of first party arises it will be realized from the portion of the land and building of first party's share only and will not be recoverable from the share of the second party; and (c) that the first party would indemnify the second party in all respect with regard to perfect and good marketable title over the subject land and assure that the first party has not been restrained by any court order or income tax or other government department or otherwise to enter into this JVA.

20. It is clear from the afore-extracted clauses that there is no specific statement by the first party as regards no litigation pending. The representation of the first party is about there being no restraint order of any court or income tax or other government department on dealing with the land. What is clear from the agreement is that the appellants had assured the complainant party (a) that there was no attachment or demand against the property; (b) that there is no restraint order operating on them to deal with the property; and (c) that they will indemnify the second party in all respect with regard to perfect, good and marketable title over the subject land. Therefore, the allegation that the accused had falsely represented about there being no litigation *qua* the land/ property is unfounded.

21. Clause 5 provides for giving of security by the second party for due compliance of the agreement. What is important is that clause 5 does not envisage refund of the security money. Rather, it speaks of adjustment of the security deposit from the share of the first party derived from sale proceeds of the proposed flats in the complex. Interestingly, the expression “respective share of the parties” is defined in the definition clause of the agreement as follows:

“That the entire project will be a single unit however for safe consideration in case of any disputes the ratio of both parties in constructed portion of the project shall be 50% each. Immediately after sanction of the map and before commencement of construction work, both the parties shall decide their respective portions in the map.

The share shall be: 50% to First Party

50% to Second Party”

22. Therefore, the deposit of security money is nonrefundable. The object of it was to ensure fulfilment of contractual obligations. In lieu of refund, the security amount had to be adjusted from the share of the first party derived from sale proceeds. In such circumstances, the allegation about security money being not refunded would not make out a criminal offence though it may give rise to a civil cause of action.

23. During arguments, we had put a specific question to the learned counsel for the respondent as to which document is alleged to have been forged by the accused to disclose their title. In response thereto, the learned counsel for the complainant placed before us a letter written by Tehsildar (Judicial), Sadar, Kanpur, U.P. which disclosed that plot no. 61 (Old Plot No. 276A) area 1500 Sq. Yds. bearing Municipal No. 3A/207 and 208, Azad Nagar, Kanpur is the ancestral property of Shri Siddharth Jain and others regarding which there is no dispute. According to the complainant, this letter is not traceable in the office from which it is purported to have been issued therefore, it is a false document.

24. In our view, merely because a document is not traceable in the records after several years of its issuance, it cannot be said that the document is forged. It is a matter of

common knowledge that certificate/letters, such as the one in question, are not maintained in perpetuity. Therefore, if, after 10 or 11 years, merely because the office reports that such letter/ certificate is not traceable in the records of the office, it cannot be said that it is forged. A document would be considered forged document only when the allegations are to the effect that it is a false document within the meaning of section 464 of the I.P.C.⁷

⁷ 464. Making a false document. —

A person is said to make a false document or false electronic record—Firstly, — Who dishonestly or fraudulently— (a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly, — Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly, — Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration. Illustrations

(a) A has a letter of credit upon B for rupees 10,000 written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000 intending that it may be believed by B that Z so wrote the letter. A has committed forgery. (b) A, without Z 's authority, affixes Z 's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery. (c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payment. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B 's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(d) Z 's will contains these words— "I direct that all my remaining property be equally divided between A, B and C ." A dishonestly scratches out B 's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(e) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order", and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(f) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(g) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(h) A writes a letter and signs it with B 's name without B 's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property. A has committed forgery.

(i) A without B 's authority writes a letter and signs it in B 's name certifying to A 's character, intending thereby to obtain employment under Z. A has committed forgery in as much as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1. — A man's signature of his own name may amount to forgery.

Illustrations:

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z 's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A 's intention, B is also guilty of forgery. (c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person whose order it was payable; here A has committed forgery.

There appears no allegations that title documents submitted by the accused were forged. In such circumstances, the allegation that false document has been submitted is baseless.

25. Insofar as the allegation regarding non-fulfillment of contractual obligations is concerned, recourse to appropriate civil remedy was required. Moreover, this is not a case where something emerged quickly after the agreement to indicate that dishonest intention existed from the beginning. The JVA is dated 16th August 2010 whereas the FIR was lodged in 2021. If there was something stark about the dishonest intention on part of one of the parties to the agreement, it would have been reported promptly and not after 10 years. This clearly indicates that the dispute between the parties was purely of a civil nature.

26. No offence of cheating is made out because, as discussed above, there is no false representation in the JVA. As far as the allegation of false representation about the title is concerned, there is nothing to indicate that what the appellants had stated in the JVA was false. Further, there is no allegation that history of title of the property/land narrated in the JVA contains any false statement. Moreover, the JVA nowhere states that there is no litigation or dispute pending, rather it speaks of indemnifying the complainant party in case of any loss on account of any dispute. The statement in the JVA that there was no restraint order of any court or Government department in respect of dealing with the land is not alleged or shown to be false or incorrect.

27. As far as non-fulfillment of contractual obligations are concerned, recourse can be had to civil remedies. On facts, recourse to criminal proceedings, in our view, is nothing but abuse of the process of law/ court. More so, when there is nothing to show that the accused had harbored a dishonest intention from inception.

28. There is no criminal breach of trust because the security amount was not refundable, rather it was adjustable against the share of the first party derived from sale proceeds. Thus, in the event of breach of any of the conditions of the agreement, the appropriate course was to take recourse to civil remedies.

29. For the foregoing reasons, we are of the considered view that dispute between the parties is essentially of a civil nature arising from the JVA. Further, a complete reading of the FIR along with admitted documents, does not disclose commission of offence of either cheating or criminal breach of trust much less creation or using of a false document.

30. We are therefore of the considered view that the impugned first information report only discloses a civil cause of action. The High Court, unfortunately, did not take pains to carefully read the FIR and consider the admitted documents including the JVA to find out

(d)A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate of Z at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e)A, a trader, in anticipation of insolvency, lodges effects with B for A 's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before. A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2. — The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery. Illustration

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Explanation 3.— For the purposes of this section, the expression “affixing electronic signature” shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000.

whether, *prima facie*, cognizable offence was made out or not. The appeal is, therefore, allowed. The judgment and order of the High Court is set aside. The impugned FIR and all proceedings emanating therefrom are hereby quashed.

31. Pending applications, if any, shall stand disposed of.

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