

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 4th OF JULY, 2023

MISC. CRIMINAL CASE No. 3315 of 2023

Between:-

1. **SHRICHAND BHAU S**

2. **RAJENDRA KUMAR**

.....PETITIONERS

(BY SHRI SAMEER KUMAR SHRIVASTAVA - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH
POLICE STATION KOTWALI DISTRICT VIDISHA
(MADHYA PRADESH)**
2. **HUKUMCHAND BALECHA**

.....RESPONDENTS

**(BY SHRI RAVINDRA SINGH – DY. ADVOCATE GENERAL
AND NONE FOR RESPONDENT NO.2 THOUGH SERVED)**

This application coming on for admission this day, the court passed the following:

ORDER

1. The present petition under Section 482 of Code of Criminal Procedure, 1973 is preferred at the instance of petitioners/accused seeking following reliefs:

“1. FIR Annexure P-1 registered at Crime No.319/2021 at Police Station Kotwali Vidisha District Vidisha (M.P.) may kindly be quashed along with charge sheet and all consequential proceedings.”

2. Through this petition, petitioners are seeking quashment of FIR which was registered against them on 07-07-2021 vide Crime No.319/2021 for the alleged offence under Section 420, 467, 468, 471, and 34 of IPC. For last more than 2 years, investigation is pending and charge-sheet has not been filed.
3. As per FIR, period of offence oscillates between 12-05-1987 to 31-12-2020. On 07-07-2021 one application was filed by Hukumchand Balecha S/o Shri Surajmal Balecha (respondent No.2 herein) with the allegations that Surajmal Balecha was owner of survey No.1537/2, 1538/2, 1540/1 situate at Vidisha and loan was obtained on 18-04-1978 by Surajmal Balecha from State Bank of India for the purpose of purchasing the property. That loan was in existence at the relevant point of time.
4. Allegations further unfolded the fact that on 12-05-1987, present petitioner No.1 -Shrichand Bhau purchased the land vide survey No.1540/1 and petitioner No.2 namely Rajendra Kumar purchased the land vide survey No.1538/2 from Surajmal Balecha, however the said sale deeds are false and fabricated. These properties were never sold

by the father of the complainant. Therefore, FIR was registered.

5. According to the complainant, his father Surajmal Balecha died on 10-03-2008 and before that on 04-03-2008, a Will was executed by his father in his favour. For better understanding of the factual details, petitioners have placed the list of dates and events involved in the case in tabular representation and same is reproduced for ready reference:

S.No.	Date	Event	Document
1	12/05/87	Petitioner No.1 purchased land of survey No.1540/1 from Surajmal Balecha. Present complainant has given his no objection on sale deed	Annexure P/2 Page No.20
2	12/05/87	Petitioner No.2 purchased land of survey No.1540/1 and 1538/2 from Surajmal Balecha. Present complainant has given his no objection on sale deed	Annexure P/3 Page No.38
3	07/10/88	Civil Suit No.4-A/2011 (earlier No.83-A/89) was filed by Hariram who was real brother of Surajmal about the property in question. In the civil suit it was pleaded that the disputed property is of joint ownership and therefore it could not have been sold to the present petitioner.	
4	17/01/90	Surajmal filed written statement and pleaded that the property is his self acquired property and sale deed done by him in favour of petitioner are not bad in	Annexure P/5 Page No.60 Para 12

		law and he has voluntarily executed the sale deed.	
5	20/09/13	Civil Suit No.4-A/2011 (earlier civil suit No.83-A/1989) was dismissed by learned Second Civil Judge Class -I, Vidisha and found that sale deed executed by Surajmal in favour of present petitioner are valid. Complainant was party in the civil suit	Annexure P/6 Page No.64 Para 22
6	29/10/13	Hariram filed civil appeal before learned Fifth Additional Judge to the Court of First Additional District Judge, Vidisha against judgment and decree dated 20-09-2013	
7	27/03/19	Neetumal son of Hariram filed a petition for mutation on the basis of will executed by late Surajmal, however, this Hon'ble Court dismissed the petition and granted liberty to get the rights adjudicated in the civil suit.	Annexure P/7 Page No.89
8	12/07/19	Civil Appeal No.79-A/2015 was allowed by learned appellate Court and remanded the matter back to the learned trial Court with the direction to decide the case again in the light of the will propounded by Neetumal	Annexure P/8 Page No.93
9	25/06/21	Tahsildar ordered for mutation of name of petitioner	Annexure P/11 Page No.113
10	28/09/21	Neetumal filed an application for compromise and prayed for withdrawal of suit	Annexure P/9 Page No.109

11	28/09/21	Learned trial Court permitted the suit to be withdrawn	Annexure P/10 Page No.110
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6. It is submitted by learned counsel for the petitioners that admittedly disputed property was of ownership of Surajmal Balecha but by registered sale deed, land under the ownership of Surajmal Balecha by way of two different sale deeds was sold out in favour of petitioners. Striking point is the fact that the present complainant namely Hukumchand Balecha has given his no objection on sale deeds by putting his signature over those sale deeds. Since then present petitioners are having right, title and interest over the suit property.
7. Hariram was real brother of Surajmal Balecha and he filed a civil suit as referred above seeking declaration of title and injunction in respect of the same disputed property which is subject matter of FIR. As per Hariram, property in question was family property, therefore, Surajmal Balecha was not having any right to alienate the property in favour of petitioners. As per Hariram, sale deeds dated 12-05-1987 executed in favour of petitioners are null and void since they were executed by playing fraud by Surajmal. It was further pleaded that the sale deeds could not have been executed since property was mortgaged with the Bank. It was also pleaded that one agreement was also executed in favour of Hariram and Surajmal Balecha, therefore, sale deeds could not have been executed. Pertinently, present petitioners were also party to the said suit.
8. Surajmal Balecha filed written statement in the said civil suit and vehemently rebutted the claim made by Hariram. Surajmal Balecha

pleaded that he was having possession of the property and sale deed has been executed by him. Loan of the Bank was also paid and therefore, he voluntarily executed the said sale deeds and he had authority to execute the same.

9. The trial Court (Second Civil Judge Class -I, Vidisha) vide judgment and decree dated 20-09-2013 dismissed the suit preferred by Hariram. It is pertinent to mention here that at the time, judgment and decree was passed, Surajmal Balecha was already expired and in place of Surajmal Balecha, complainant herein along with his mother, brother and sister were brought on record. Since complainant was party in the *lis*, therefore, the said judgment and decree was binding on the complainant as well.
10. Surajmal Balecha specifically pleaded in the written statement before the trial Court that no dues of bank are remaining on the property. Said fact was reflected in para 15 of the judgment passed by the trial Court.
11. Hariram preferred appeal before the appellate Court challenging the judgment and decree dated 28-09-2013, however during pendency of appeal Hariram died and in place of Hariram, his son Neetumal was brought on record. Incidentally, Neetumal propounded a Will dated 20-04-2007 in his favour allegedly executed by Surajmal Balecha in favour of Neetumal and on the basis of said Will he filed an application for mutation after the death of Surajmal Balecha on 10-03-2008. For mutation, matter travelled upto the forum of Board of Revenue, at the instance of Neetumal and thereafter Writ Petition

No.2356/2016 was filed. Neetumal suffered order dated 27-03-2019 by Writ Court in which he was given liberty to file civil suit for declaration of title on the basis of Will.

- 12.** Thereafter, Neetumal filed an application in the pending Civil Appeal (First Additional District Judge, Vidisha) resting his claim on the basis of Will. Since Will was produced and it was required to be proved by Neetumal through evidence, therefore, case was remanded by the first appellate Court before the trial Court for taking evidence.
- 13.** After remand, on 28-09-2021 Neetumal filed an application seeking withdrawal of civil suit on the basis of compromise and incidentally in the said compromise petition, complainant, present petitioners and Neetumal, all were party and consented to the said compromise. On the basis of said compromise, civil suit was withdrawn by Neetumal under Order XXIII Rule 1 of CPC vide order dated 28-09-2021 (Annexure P-10).
- 14.** Meanwhile, petitioners moved an application for mutation before Tahsildar and their names were mutated vide order dated 25-06-2021 by Tahsildar, Tahsil Vidisha.
- 15.** Immediately thereafter, on 07-07-2021, a complaint was made on which, FIR was registered against the petitioners for offence under Sections 420, 467, 468, 471, and 34 of IPC. Incidentally, for two years investigation is pending.
- 16.** It is further submission of learned counsel for the petitioners that it is a case where attributes of civil case are tried to be converted into criminal offence. When complainant failed to get any results in civil

litigation then on false pretext, case has been registered after 34 years of alleged cause of action. Learned counsel for the petitioners further submitted that the present complainant has given his no objection on sale deed dated 12-05-1987, therefore, the said consent is binding over him. Even otherwise, documents are registered sale deeds and when executant of sale deeds namely Surajmal Balecha specifically pleaded that he executed the sale deeds by his free will, without any fraud then complainant being his son has no occasion to reagitate after 34 years of execution of sale deed.

- 17.** Learned counsel for the petitioners referred the fact that Surajmal Balecha died on 10-03-2008 and complainant Hukumchand being his son came out with a Will dated 04-03-2008 allegedly executed by Surajmal Balecha in favour of Hukumchand and his brother Bhagwandas giving 50% share each. At the same time, Neetumal son of Hariram also propounded a Will dated 20-04-2007 allegedly executed by Surajmal Balecha in favour of Neetumal. Therefore, when two cousins themselves are at loggerheads then it indicates the nature of allegations. During his lifetime, Surajmal Balecha never challenged the sale deeds made in favour of present petitioners and after his death, his legal representative cannot challenge the sale deeds just to exert pressure.
- 18.** Learned counsel for the petitioners referred civil proceedings to bring home the fact that in civil suit, Neetumal withdrew the suit and looking to the subject matter of suit, the present issue attained finality.
- 19.** It is further submitted that the State Bank of India never raised any

objection about the transactions held by way of sale deed dated 12-05-1987 because liability of Bank was satisfied then and there only by Surajmal Balecha. The said fact is reflected in the judgment dated 12-07-2019 when the matter was remanded back to the trial Court by the first appellate Court. Therefore, no case is made out *prima facie* as per the judgment of Hon'ble Apex Court in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604** and **Rajiv Thapar and others Vs. Madanlal Kapoor (2013) 3 SCC 330**.

Counsel for the petitioners submits that if charge-sheet is filed after two years, then Magistrate would immediately commit the matter, thus petitioners have no respite and they would have to face full trial.

20. Learned counsel for the petitioners relied upon the settled proposition of law that in the lifetime of the owner of the property, his heirs do not have any right in the property and such owner may deal with the property as per his wish. He relied upon **Bipta Bai (Smt.) Vs. Smt. Shipra Bai, ILR 2009 MP 1402**. He also relied upon the judgment of **Madhusudan Chouhan Vs. Sangeeta Mathur 2019 (3) MPLJ (Cri.) 621** and submitted that genuineness of sale deed is civil in nature and when civil suit was decided then no complaint for cheating can be entertained. He also relied upon **Mukul Agrawal Vs. State of U.P. 2020 (3) MPLJ (Cri.) SC 228**, **Lalmuni Devi Vs. State of Bihar (2001) 2 SCC 17**, **Prem Kumar Vs. State of Rajasthan and another (2020) 20 SCC 623** and **Rajib Ranjan Vs. Vijaykumar 2015 (2) MPLJ (Cri.) 559**.

21. Learned counsel for the respondents/State opposed the submissions made by the petitioners' counsel and submitted that FIR has been registered and Surajmal Balecha mortgaged his Bhoo-Adhikar Rin Pustika and taken loan from the Bank. As per FIR, Surajmal Balecha never sold his land to anybody. Only Will prepared by Surajmal Balecha is Will dated 04-03-2008 and same is a registered Will. Therefore registered sale deeds have been fabricated by the petitioners. On the basis of allegations, case has been registered and petitioners and Neetumal forged the documents to snatch the property of complainant, therefore, investigation is going on. Thus, prayed for dismissal of petition on the basis of case diary.
22. Nobody appeared on behalf of respondent No.2 despite being served.
23. Heard learned counsel for the parties at length and perused the case diary.
24. **“Chaos has come again.”**
Oft repeated quote from Othello suites the present set of facts. Petitioners/accused are facing investigation for last 2 years (since 07-07-2021) when the complaint was filed and incidentally neither charge-sheet is being filed nor Khatma report.
25. Sheet anchor of case of complainant is allegation that the sale deeds dated 12-05-1987 were obtained by the petitioners through fraud. On close scrutiny, it appears that complainant himself signed the sale deeds and gave no objection over those documents.
26. Surprisingly, complainant has nowhere referred such fact. Real brother of complainant namely, Bhagwandas Balecha in his

statement before Police endorsed the fact that father of complainant and Bhagwandas sold the part of land to petitioners on 12-05-1987 for sale consideration of Rs.48,000/- each. Complainant intends to establish his case on the basis of alleged Will dated 04-03-2008 also but he did not propound it by way of civil proceedings. His first cousin Neetumal also propounded a Will dated 20-04-2007 allegedly executed by Surajmal Balecha in favour of Neetumal and once he withdrew the civil litigation as referred above by application under Order XXIII Rule 1 of CPC on the ground that settlement has arrived between the parties including the present petitioners then conduct of complainant becomes doubtful. In fact both the cousins levelled allegations against each other before police. He lodged the complaint in 2021 and execution of sale deeds took place in 1987. Therefore, after 34 years he lodged the complaint which is nothing but an attempt to turn the civil case into criminal liability.

27. Sale deeds dated 12-05-1987 executed by Surajmal Balecha were registered sale deeds and authenticity of those documents cannot be put to challenge that too after 34 years when all sorts of possible limitation periods expired.
28. Even otherwise, it is settled proposition of law that in the lifetime of owner of property, heirs do not have any right in the property and such owner may deal with the property as per his wish. Owner Surajmal Balecha executed registered sale deeds and never challenged the same during his lifetime (till his death in March, 2008), therefore, legal heir after death of owner cannot challenge the

sale deed at this stage. Even otherwise, in civil suit as referred above, Surajmal Balecha in fact supported the petitioners and categorically admitted that he executed sale deeds to petitioners on 12-05-1987. Therefore, claim of complainant stands rebutted by executant of sale deeds himself.

29. Even if they have any doubt about genuineness of sale deeds then appropriate remedy would have been civil suit and not the instant complaint which is being filed. In **Mukul Agrawal (supra), Lalmuni Devi (supra), Prem Kumar (supra) and Rajib Ranjan (supra)**, the Apex Court held time and again that such type of complaints are frivolous in nature. Here, in present case also it appears that after exhausting civil proceedings, complainant filed police complaint.
30. In the case of **Indian Oil Corpn. Vs. NEPC India Ltd. and others, (2006) 6 SCC 736**, the Apex Court not only deprecated such practice but also suggested steps which can be taken by the Courts to curb unnecessary prosecutions and harassment of parties especially to exercise power under *section 250* Cr.P.C. more frequently, where Courts discern malice or frivolousness or ulterior motives on the part of the complainant. Relevant paras are reproduced as under:

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family

disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In [G. Sagar Suri vs. State of UP](#) [2000 (2) SCC 636], this Court observed :

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

14. *While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.*

One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

31. Recently, the Apex Court in the case of **Vijay Kumar Ghai and others Vs. State of West Bengal and others, (2022) 7 SCC 124** reiterated the same principle and deprecated conversion of civil dispute into criminal liability. Instant matter is a case where civil liability (if any) is tried to be converted into criminal prosecution.
32. There is growing tendency amongst the people to convert Commercial/Transactional/Property related/ Partnership/ Arbitration/ Family/Matrimonial/Medical Negligence related disputes into criminal prosecution so that accused may succumb to the wrath of procedure involved in the criminal cases and settle the matter which otherwise is the domain of Civil Courts. When the case could have been settled through Arbitration or Civil proceedings or through Mediation but instead of going for that, vested interest/complainant directly approach the Police Stations for filing complaints and those complaints are readily accepted by the police despite the fact that exceptions have been carved out by the Apex Court in the case of **Lalita Kumari Vs. Government of U.P. and others, (2014) 2 SCC 1** in which, in certain cases preliminary enquiry were contemplated/directed. In para 120.6 of the judgment, the Apex Court discussed as under:

“120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/ family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.”

- 33.** All these tricks and tactics place the accused in a vulnerable position because once he is involved in such type of cases then immediate reaction is freezing of his peace of mind and vaporization of financial resources, inconvenience to his employment/business and loss of social image. These are the instant casualties and when after some years of trial and tribulation if he is acquitted by trial Court, even then Procedural Justice is not available to him. He lost his valuable years engaged in defending himself on such flimsy pretext. Procedure of Justice if prolonged, then it has the trappings of harassment.
- 34.** In the case of **State of Gujarat Vs. Kishanbhai and others, (2014) 5 SCC 108**, the Apex Court while dealing with the case where acquittal

was recorded because of poor investigation despite a very heinous crime being committed by the accused, the Apex Court made scathing remarks against Investigation as well as Prosecution and those remarks are in the nature of guidance for Administration of Justice as a wake up call. The relevant paras as under:

19. Every time there is an acquittal, the consequences are just the same, as have been noticed hereinabove. The purpose of justice has not been achieved. There is also another side to be taken into consideration. We have declared the accused-respondent innocent, by upholding the order of the High Court, giving him the benefit of doubt. He may be truly innocent, or he may have succeeded because of the lapses committed by the investigating/prosecuting teams. If he has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to suffer the turmoil of a long drawn litigation, spanning over a decade, or more. The expenses incurred by an accused in his defence can dry up all his financial resources – ancestral or personal. Criminal litigation could also ordinarily involve financial borrowings. An accused can be expected to be under a financial debt, by the time his ordeal is over.

20. Numerous petitions are filed before this Court, praying for anticipatory bail (under Section 438 of the Code of Criminal Procedure) at the behest of persons apprehending arrest, or for bail (under Section 439 of the Code of Criminal Procedure) at the behest of persons already under detention. In a large number of such petitions, the main contention is of false implication. Likewise, many petitions seeking quashing of criminal proceeding (filed under Section 482 of the Code of Criminal Procedure) come up for hearing day after day, wherein also, the main contention is of fraudulent entanglement/involvement. In matters where prayers for anticipatory bail or for bail made under Sections 438 and 439 are denied, or where a quashing petition filed under Section 482 of the Code of Criminal Procedure is declined, the person concerned may have to suffer periods of incarceration for different lengths of time. They suffer captivity and confinement most of the times (at least where they are accused of serious offences), till the culmination of their trial. In case of their conviction, they would continue in confinement during the appellate stages also, and in matters which reach the Supreme Court, till the disposal of their appeals by this Court. By the time they are acquitted at the appellate stage, they may have undergone long years of custody. When acquitted by this Court, they may have suffered imprisonment of 10 years, or more. When they are acquitted (by the trial or the appellate court), no one returns to them; what was wrongfully taken

away from them. The system responsible for the administration of justice, is responsible for having deprived them of their lives, equivalent to the period of their detention. It is not untrue, that for all the wrong reasons, innocent persons are subjected to suffer the ignominy of criminal prosecution and to suffer shame and humiliation. Just like it is the bounden duty of a court to serve the cause of justice to the victim, so also, it is the bounden duty of a court to ensure that an innocent person is not subjected to the rigours of criminal prosecution.

21. *The situation referred to above needs to be remedied. For the said purpose, adherence to a simple procedure could serve the objective. We accordingly direct, that on the completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind, and require all shortcomings to be rectified, if necessary by requiring further investigation. It should also be ensured, that the evidence gathered during investigation is truly and faithfully utilized, by confirming that all relevant witnesses and materials for proving the charges are conscientiously presented during the trial of a case. This would achieve two purposes. Only persons against whom there is sufficient evidence, will have to suffer the rigors of criminal prosecution. By following the above procedure, in most criminal prosecutions, the concerned agencies will be able to successfully establish the guilt of the accused.*

22. *Every acquittal should be understood as a failure of the*

justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilized for crystalizing mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course- content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by

the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses.

23. *On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring*

officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.

35. Making complaint does not mean charge-sheet is to be filed necessarily. Regulations 518 and 775-A of M.P. Police Regulations deal with such aspect which are reproduced for ready reference:

“518. Chalans –Prosecution of cases – All chalans of accused persons sent to headquarters should in the first instance be brought to the police prosecutor Inspector, who should examine them to see that they are in order, that the evidence is satisfactory, and that the antecedents of the accused have been properly verified. If the case is one in which his appearance is not required, he should send the chalan to the officer in charge of the case with any instructions that are necessary. The Police Prosecutor should himself conduct all important or difficult cases. He should make himself thoroughly acquainted with the case diary and should master all the facts of the case before the first hearing. When evidence is produced for the defense, he should, whenever possible, obtain, before the date fixed for the examination of the witnesses, any evidence with regard to their character, antecedents, and connection with the

accused, which is likely to be of use in cross examination. He should consult the Superintendent of Police when he is in doubt as to the course to be pursued and should inform him whenever he considers that a case is so important or difficult as to require the employment of a legal practitioner. He shall not, however, leave the prosecution of police cases in the hands of legal practitioner engaged by private persons, without the express orders of the Superintendent of Police. Cases sent in by the railway police, if not prosecuted by the Railway Police Prosecutor, will be dealt with by the Police Prosecutor in the same way as district cases. In serious cases and criminal appeal in the court of the Sessions Judge, the Police Prosecutor will, when necessary, instruct the Divisional Public Prosecutor.

775-A. (1) Before a charge sheet is presented to a Magistrate the Police Prosecutor shall study it carefully and shall bring to the notice of the Superintendent of Police or any other superior officer present at the station any defects in its preparation. If the Superintendent of Police or other superior officer agrees with the Police Prosecutor, the charge sheet shall be forwarded to the investigating officer concerned with instructions showing the defects and asking him to carry out the necessary corrections in it.

(2) The police Prosecutor shall also study the case-diary and if, in his opinion, any case is too weak for prosecution, he shall report accordingly to the Superintendent of Police or other superior officer present at the station and ask for an

order to discharge the accused.

(3) Action under sub-rule (1) or sub-rule(2) shall be taken without delay and in the absence of the Superintendent of Police or other superior officer the Police Prosecutor shall take the necessary action on his own responsibility.”

- 36.** In pursuance to judgment of Apex Court in Kishanbhai (supra), on 15-04-2019, Director, Prosecution has issued a circular in which District Public Prosecutors/Public Prosecutors were directed to perform their duties in meaningful manner while while scrutinizing each and every charge-sheet before filing before the Courts. Clause 4, 8 and 9 are relevant in the present set of facts:

“4. विधिक संवीक्षा संलग्न प्रोफार्मा पी-1 अनुसार की जाएगी। संवीक्षाकर्ता का यह दायित्व होगा कि वह अभियोग पत्र प्रस्तुति के संबंध में संपूर्ण साक्ष्य का अवलोकन कर अधियोग पत्र/खात्मा/खारिजी/अंतिम प्रतिवेदन के संबंध में अपना स्पष्ट अभिमत दे।

8. अभियोजन अधिकारी द्वारा केवल उसी सीति में अभियोग पत्र न्यायालय के समक्ष अग्रेषित किया जाए जब वह संकलित साक्ष्य से संतुष्ट हो और चालान योग्य पर्याप्त साक्ष्य अभिलेख पर उपलब्ध हो, अपर्याप्त साक्ष्य की स्थिति में कदापि अधियोग पत्र अग्रेषित न किया जाए।

9. अपर्याप्त साक्ष्य की स्थिति में यदि पुलिस अधीक्षक अथवा अन्य सक्षम पुलिस अधिकारी स्कूटनीकर्ता के अभिमत से भिन्न मत रखते हुए अभियोग पत्र/अंतिम प्रतिवेदन प्रस्तुत करने का निर्देश देते हैं तो ऐसी स्थिति में अभियोग पत्र/अंतिम प्रतिवेदन पुलिस द्वारा सीधे न्यायालय में प्रस्तुत किया जाए।”

37. Later on, again on 03-02-2022, Director Prosecution issued another circular to the District Prosecution Officer/Public Prosecutor to give individual and objective opinion before filing charge-sheet possibly online on Integrated Criminal Justice System (ICJS).
38. This Court is referring Police Regulation 518 and 775-A and these circulars for the simple reason that in the present case Station House Officer and Investigating Officer of the Police Station as well as District Prosecution Officer/Public Prosecutor were required to be vigilant because allegations have all the trappings of civil liability and tried to be converted into criminal offence. District Prosecution Officer/Public Prosecutor ought to have been vigilant and proactive and they should have given honest opinion regarding the correct facts and outcome of the case. Nowadays, it is seen (many a times) that initially case is registered under Sections 406 and 420 of IPC and thereafter offences under Sections 467, 468 and 471 of IPC are added so as to take the matter out of the purview of benefits flowing to the accused from the judgment of **Arnesh Kumar Vs. State of Bihar and another, (2014) 8 SCC 273** because for Sections 406 and 420 of IPC maximum punishment is 7 years, therefore, accused gets the benefit of notice under Section 41-A of Cr.P.C. Therefore, to make it complicated (rather draconian), Station House Officer and Investigating Officer create cobweb for ulterior motive.
39. Therefore, role of **Superintendent of Police of District** also assumes importance because it is his duty as per Police Regulation to supervise such type of mischief going on in police stations in his district.

Superintendent of Police of district is required to be more vigilant and is meant to ensure that investigations of criminal cases proceed in Just and Fair manner. In those cases where civil dispute is tried to be converted into criminal allegations, then the Superintendent of Police should intervene with the help of District Prosecution Officer and they must come out for course correction so that innocent may not be targeted.

40. In our **Adversarial System of Adjudication**, the judgment of the Apex Court in the case of **Kishanbhai and others (supra)** and circulars issued by Director, Prosecution appear to be providing a type of **Inquisitorial Mechanism** in the realm of crime investigation/prosecution. If District Prosecution Officer acts promptly then he acts as strong filter against the police oppression and injustice, if any inflicted to an innocent person specifically when person is implicated with criminality in case of civil dispute.
41. Apprehension of petitioner that once charge-sheet is filed, then he will have to face whole trial does not stand correct. Because another filter comes at the stage when charge-sheet is filed before the Magistrate because he must exercise his powers (*suo motu* even in appropriate cases) if he finds the case fit for further investigation as held by three judge Bench of Apex Court in recent judgment in the case of **Vinubhai Haribhai Malaviya and others Vs. State of Gujarat and another, (2019) 17 SCC 1** in which while considering the series of judgments of Apex Court from time to time right from **Sakiri Vasu Vs. State of U.P. and others, (2008) 2 SCC 409**, **State of Bihar Vs.**

***J.A.C. Saldanha*, (1980) 1 SCC 554, *Ram Lal Narang Vs. State (Delhi Administration)*, (1979) 2 SCC 322, *H.N. Rishbud and Another Vs. State of Delhi*, AIR 1955 SC 196, *Union Public Service Commission Vs. S. Papaiah*, (1997) 7 SCC 614, *Hasanbhai Valibhai Qureshi Vs. State of Gujarat and Ors.*, (2004) 5 SCC 347, *Samaj Parivartan Samudaya and Ors. Vs. State of Karnataka and Ors.* (2012) 7 SCC 407 held that till the trial commences (when charges are framed), Magistrate has power to order further investigation. Relevant paras are reproduced below:**

“25. It is thus clear that the Magistrate’s power under Section 156(3) of the CrPC is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a “proper investigation” takes place in the sense of a fair and just investigation by the police - which such Magistrate is to supervise - Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the “investigation” referred to in Section 156(1) of the CrPC would, as per the definition of “investigation” under Section 2(h), include all proceedings for collection of evidence conducted by a police officer; which would

undoubtedly include proceedings by way of further investigation under Section 173(8) of the CrPC.

*38. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, **Sakiri (supra)**, **Samaj Parivartan Samudaya (supra)**, **Vinay Tyagi (supra)**, and **Hardeep Singh (supra)**; **Hardeep Singh (supra)** having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is*

*no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in *Hasanbhai Valibhai Qureshi (supra)*. Therefore, to the extent that the judgments in *Amrutbhai Shambubhai Patel (supra)*, *Athul Rao (supra)* and *Bikash Ranjan Rout (supra)* have held to the contrary, they stand overruled. Needless to add, *Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361* and *Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129* also stand overruled.”*

42. Even Hon'ble Three Judge Bench in this case went to the extent of holding those judgments which restricted the scope of power for further investigation as not laying down the correct law. Those

judgments; **Amrutbhai Shambubhai Patel Vs. Sumanbhai Kantibai Patel (2017) 4 SCC 177**, **Devarapalli Lakshminarayana Reddy & Ors. Vs. V. Narayana Reddy & Ors. (1976) 3 SCC 252**, **Bhagwant Singh Vs. Commissioner of Police and another, (1985) 2 SCC 537** were discussed and thereafter not relied by the said Three Judge Bench. Therefore, Magistrate's power for further investigation is unquestioned, ergo, it is the duty of Magistrate to look into the allegations and if he is not satisfied with the investigation then he should refer the matter for further investigation, specifically in the matters where civil disputes are tried to be converted into criminal prosecution. This would be another safety valve of check as Inquisitorial Magistracy against persecution of Investigation and Prosecution.

43. In sum and substance, this Court does not mandate that in all cases, S.P. and D.P.O. should exonerate the accused or trial Court to order for re-investigation. But in large number of cases people are implicated falsely. Therefore, it is their solemn duty to protect innocent persons.
44. In the present case, for two years petitioners languished in confusion, fear and apprehension. Although, some procedural irregularity might have been committed by petitioners or even things might not have been done like the way which they ought to have been done, but still that does not constitute criminal offence *per se*.
45. So far as scope of petition under Section 482 of Cr.P.C. is concerned, it has been discussed in plethora of judgments of Hon'ble Apex Court

right from the case of **Madhavrao Jiwaji Rao Scinda Vs. Sambhajirao Chandrojirao Angre**, (1988) 1 SCC 692, *State of Haryana Vs. Bhajanlal* 1992 Supp (1) SCC 335, **Rupan Deol Bajaj Vs. Kanwar Pal Singh Gill** (1995) 6 SCC 194, **Central Bureau of Investigation Vs. Duncans Agro Industries Ltd.**, (1996) 5 SCC 591, *State of Bihar Vs. Rajendra Agrawalla* (1996) 8 SCC 164, **Rajesh Bajaj Vs. State NCT of Delhi**, (1999) 3 SCC 259, Medchl Chemicals & Pharma (P) Ltd. Vs. Biological E. Ltd., (2000) 3 SCC 269, *Hridaya Ranjan Prasad Verma Vs. State of Bihar* (2000) 4 SCC 168, *M. Krishnan Vs. Vijay Kumar* (2001) 8 SCC 645, and Zandu Phamaceutical Works Ltd. Vs. Mohd. Sharaful Haque 2005 (1) SCC 122 and **Rajiv Thapar and others Vs. Madanlal Kapoor** (2013) 3 SCC 330. In the case of **Rajiv Thapar and others (supra)**, the Apex Court has given guidance, under which circumstances, documents relied by the accused can be considered in a petition under Section 482 of Cr.P.C. which reads as under:

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under [Section 482](#) of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the

charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under [Section 482](#) of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

46. By reading the above judgment and applying in the present set of facts, it is clear that the documents/material relied by the present petitioners clearly covers the present issue and therefore, entire prosecution deserves quashment.
47. Even otherwise, as per the judgment in the case of **Ch. Bhajan Lal**

(supra) allegations even if they are taken on face value and accepted in their entirety do not prima facie constitute offence or make out a case against the accused. Similarly allegations of complainant are so absurd and inherently so improper on the basis of which no prudent person can ever reach a just conclusion. Also criminal proceeding is manifestly attended with malafide and is maliciously instituted with an ulterior motive to wreak vengeance on the accused with a view to spite him due to private and personal grudge. Out of different grounds as enumerated in **Ch. Bhajan Lal (supra)** grounds (1), (5) and (7) cover the instant case.

48. To recapitulate for conclusion, in the present case, on the basis of facts narrated it appears that once civil proceedings came to an end and once petitioners purchased the property through valid registered instruments, recognized by law then the complainant had no occasion to file criminal complaint specifically when he lost from all forums in civil litigation and never propounded and established the Will dated 04-03-2008 and now trying to get it done through indirect means which he could not achieve through direct means. Same is not permissible in the eyes of law and petitioners/accused are required to be protected from the wrath of such malicious prosecution. Therefore, the FIR registered against petitioners on 07-07-2021 vide Crime No.319/2021 for the offences under Section 420, 467, 468, 471, and 34 of IPC are hereby **quashed**.
49. The Apex Court in the case of **Indian Oil Corporation (supra)** suggested proceedings under **Section 250 of Cr.P.C. Compensation**

for accusation without reasonable cause. At the same time Police Officers (Superintendent of Police/Station House Officer/ Investigating Officer) as well as District Prosecution Officers (D.P.O. etc.) must be aware of provisions under **Chapter IX (of offences by or relating to public servants)** specifically Sections 166, 166-A and 167 of IPC and all these officers are required to be cautious so that in future they may not face such accusation if failed to perform their duties as assigned to them. However, in the present set of facts, this Court desist to pass such direction. However, this Court intends to convey the word of caution to these officers for their future disposition/duties.

- 50.** Copy of this order be sent to the **Director General of Police, Bhopal** as well as **Director, Prosecution, Bhopal** to go through the spirit of the order and remind themselves that M.P. Police earlier had the stalwarts like **Shri K.F. Rustamji and Shri B.P. Dubey** who adorned the post of Head of the Police Department of M.P. Its time to remember and redeem their glory. Therefore, D.G.P. & Director (Prosecution) are requested to apprise the Inspector General of all zones and Superintendent of Police of all Districts as well as District Public Prosecutors to act proactively and accountably for the cause of justice as per the spirit echoed in this judgment which is based upon the spirit of judgments passed by the Apex Court from time to time specifically in the case of **Kishanbhai (supra)**.
- 51.** It is expected from the all Superintendent of Police of every Districts that they would cooperate with the District Prosecution Officers and

would undertake periodic appraisal of pending charge-sheets specifically in those cases where civil disputes are tried to be converted into criminal prosecution. Purpose is to convey that Police Officers and Prosecution must remain on same page and it is expected that Investigating Officer and Station House Officer of Police Stations would not abandon the cause once charge-sheet is filed and they will keep in touch with the Prosecutors regularly for early conclusion of trial.

- 52.** Petition stands allowed. FIR registered at Crime No.319/2021 for the offences under Section 420, 467, 468, 471, and 34 of IPC against the petitioners stands quashed. Petitioners are set free.
- 53. Disposed of.**

(Anand Pathak)
Judge