IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10510 of 2024

Arising Out of PS. Case No.-275 Year-2022 Thana- GAURICHAK District- Patna

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Randhir Kumar Sinha Son Of Late Ishwar Dayal Sinha Resident Of - Ashok Nagar, Road No.- 11b, P.S. - Kankarbagh, Town And District - Patna. At Presently Residing At - Opto House, Ofd Estate, Raipur Road, Dehradun

... ... Petitioner/s

Versus

1. The State Of Bihar
2. Prashant Kumar Sinha Son Of Late Madan Mohan Prasad Sinha West Chandmari Road, Janta Path, P.S. - Kankarbagh, Patna

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Ranjan, Advocate
	:	Mr. Chandan Jha, Advocate
For the State	:	Mr. Ram Priya Sharan Singh, APP
For the O.P. No.2	:	Mr. Sunil Kumar, Sr. Advocate
	:	Mr. Abhay Shanker, Advocate
	:	Mr. Chandra Mohan Jha, Advocate

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CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

C.A.V. JUDGMENT

Date : 21-09-2026

Heard Mr. Sanjeev Ranjan, learned counsel for the petitioner, Mr. Ram Priya Sharan Singh, learned APP for the State and Mr. Sunil Kumar, learned senior counsel for the opposite party no.2, who appeared though virtual mode.

2. By the present application the petitioner has prayed for quashing of the order dated 27.04.2023, passed by the learned Additional Chief Judicial Magistarte- VI, Patna City, Patna in connection with Gaurichak P.S. Case No. 275 of 2022, whereby cognizance has been taken u/s 406, 420, 467, 468, 471 r/w 34 of Indian Penal Code (hereinafter referred as IPC) and summons have been issued thereunder for the appearance of the

accused persons.

3. The present case arises out of a written report filed by the informant Prashant Kumar Sinha (O.P. No.2) before the S.H.O., Gaurichak P.S., Patna wherein it was alleged that informant's late father were six brothers and a family partition was done between them on 24.12.1978 and became effective since 01.01.1979, in consequence of which, they came into possession of their respective shares. It is further alleged that Ishwar Dayal Sinha (Late father of the petitioner) and Krishna Mohan Sahay sold off their share of land on 16.11.1987. It has been further stated that Late Madan Mohan Prasad Sinha (father of O.P. No.2) and Raj Kumar Sinha also got their share including 19 and half katha land in Hetla khanda. However, in the year 2001/02, Ishwar Dayal Sinha on the basis of a forged succession certificate, got the land at Hetla khanda mutated in his name fraudulently vide case No. 247/2001-2002. Upon having knowledge of the same, the informant's father filed an application dated 07.09.2014 before the Circle Officer, who sought a report with regard to the same and documents were also asked from Ishwar Dayal Sinha as the revenue receipt was issued in his name but no document was submitted. On 14.03.2015, upon perusal of the partitioned documents created a

separate jamabandi in the name of Madan Mohan Prasad Sinha and Raj Kumar Sinha in Mutation Case No. 84/14-15.

4. Further case of the informant/prosecution is that the three sons of late Ishwar Dayal Sinha and Pyare Mohan Sahay deliberately and fraudulently sold the vacant residential land of 45.4375 decimals to one Mukesh Kumar Singh by executing a sale deed by using the aforesaid forged documents.

5. Gaurichak P.S. Case No. 275 of 2022 was instituted on the basis of the aforementioned written report of the informant on 08.05.2022 for offences u/s 406, 420, 467, 468, 471/34 of the IPC.

6. Learned counsel for the petitioner has submitted at the outset that the above- mentioned Gaurichak P.S. Case No. 275 of 2022, after thorough investigation culminated into a final report dated 28.08.2022 stating the case to be of civil nature. However, differing with the said final report the learned court of Sub-Judge-VI- cum- ACJM**,** Patna City took cognizance in the matter finding prima facie case against the accused persons, vide the impugned order dated 27.04.2023. It has been pointed out from the impugned order itself that the learned Magistrate has also given the finding that the case is of civil nature but has proceeded to record that after perusal of paras 1, 4 and 5 of the

case diary, sufficient material has been found on record to make out a *prima facie* case against the accused persons. In this regard, it has been submitted that para 1,4 and 5 of the case diary disclose no further or tangible material and are rather a reproduction of the FIR itself, restatement of the informant (O.P. No. 2) and the statement of own brother of the informant, reiterating the same facts, and investigation on the said facts has already led to a final report finding the case to be of civil nature.

7. It has further been empathically submitted that no criminal offence is made out against the petitioner, much less under the alleged offences, whereunder cognizance has been taken. To lend support to his argument he has invited the attention of this court to the narration of the facts disclosed in the FIR itself. It has been pointed out that even as per the FIR, it was Ishwar Dayal Sinha, late father of the petitioner, who allegedly prepared a forged succession certificate and on the basis of the same got the land at Mohaddipur (Hetla Khanda) mutated in his name in the year 2001/02. This fact came into the knowledge of the father of the informant (O.P. No.2) way back in the year 2014 itself, for which recourse was taken to civil remedy in the same year by way of filing the application before the Circle Officer.

8. It is next submitted that the present case is based on a purely and essentially civil dispute between close relatives relating to family property which led to several litigations under the revenue laws. The mutation case filed on the first occasion in the year 2013-14 by the informant's father was rejected but the subsequent case, which was allowed in 2015, was challenged in appeal before the learned DCLR, Masaurhi by the petitioner's father and the same was allowed and a revision petition filed by the father of the informant was also dismissed. In the event of the death of his father on 17.09.2019, the petitioner, who was working in Dehradun Ordinance Factory, finding it difficult to manage the property, sold off the same along with his brothers on 28.10.2020.

9. Learned counsel has also apprised this court of the fact that a Title Suit bearing Title Suit No. 152 of 2021 was also filed on 06.04.2021 against the sale deed dated 28.10.2020 and after lapse of about one year of filing the said suit, the present FIR was lodged which subsequently resulted into the final report. In such background, the learned counsel for the petitioner has submitted that the present prosecution also suffers form the vice of inordinate delay in lodging the FIR and in absence of any plausible explanation for the same, the delay in

the present case becomes fatal and is also attended with malafide, as the informant has used the present case as a short-cut method for giving vent to his grievances. In this context, he has referred the case of ***Kishan Singh Vs. Gurpal Singh*** reported in ***(2010) 8 SCC 775***, wherein considering these factors their lordships had held that the court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution and took a view that the criminal proceedings were not bonafide, in the background of recourse have been taken to other civil remedies and considered the same to be an abuse of the process of law. This judgment also took note of and relied upon the case of ***Chandrapal Singh vs. Maharaj Singh***, reported in ***(1982) 1 SCC 466***. The case of ***Kishan Singh*** (supra) was further relied upon by the Hon'ble Apex Court in the case of ***Nazibul Rahim Khan vs. State of U.P.***, reported in ***2026 SCC OnLine SC 1557*** , while quashing the criminal proceedings.

10. A pointed submission has also been made on the ground that no case of forgery is made out against the petitioner in view of the fact that the forged document if any, as per the FIR itself, was created by the late father of the petitioner. The petitioner along with his brothers executed the sale deed under a bona-fide belief as the name of his father had been mutated

before. It has been submitted in this context that the present case is squarely covered by the case of ***Mohd. Ibrahim v. State of Bihar***, reported in ***(2009) 8 SCC 751***, where the same question fell for consideration. The term 'forgery' was discussed in detail and in paragraph 12 of the said judgment it was clearly stated that there is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorized or empowered by the owner, to execute the deed on owner's behalf. As such, it is submitted that the petitioner, having acted on a bonafide belief of ownership of the property, cannot be prosecuted for the offence of forgery and moreover, there is no allegation upon this petitioner of having prepared any false or forged document. Reliance has also been made upon this very judgment of Md. Ibrahim to even contend that no offence under section 420 of IPC is also made out against the petitioner as in the act of executing the sale deed upon a bonafide claim of his ownership, no elements of deception or misrepresentation are involved.

11. Per contra, the learned senior counsel appearing on behalf of the Opposite Party No.2 has submitted that the present case involves the offence of forgery and cheating

indulged into by the petitioner's father and also this petitioner along with other accused persons. The act of the petitioner of selling off the land belonging to the share of the informant's father, is clearly demonstrative of the fact that the petitioner and other accused persons connived with each other for creating/utilizing the false document of partition with a dishonest intention to defraud the O.P. No.2, despite the fact that as per the khangi batwara dated 24.12.1978, the land in question fell into the share of the father of O.P. No. 2. The contents of the FIR have been said to be true and it has been reiterated by the learned senior counsel that the illegalities committed by the petitioner's father in the year 2001-2002 was challenged by the father of O.P. No. 2 when things came into his knowledge and after the death of the petitioner's father in the year 2017, the petitioner along with his brothers committed a further fraudulent act of executing a sale deed pertaining to the land belonging to the O.P. No. 2.

12. Learned senior counsel has strongly contended that the act of the petitioner, although arising out of a civil dispute, has the element of criminality and the petitioner thus becomes liable both under civil and criminal proceedings. For lending strength to the said argument, he further submitted that

the pendency of civil proceeding is not a bar upon initiation of a criminal prosecution and that availability of a civil remedy cannot itself be a ground for quashing a criminal proceeding. Reference has been made to the case of ***P. Swaroopa Rani vs. M. Hari Narayana***, reported in ***(2008) 5 SCC 765***, in this regard and also to the recent case of ***C.S. Prasad vs. C. Satyakumar***, reported in ***2026 SCC OnLine SC 50*** and paragraphs 26, 27 and 28 of the said judgment has been relied upon to contend that it is a settled principle of criminal jurisprudence that civil and criminal liability may arise from the same set of facts and mere pendency of civil proceedings between the parties is no justification to quash the criminal proceedings if ingredients of a criminal offence are disclosed.

13. Learned senior counsel strongly relied upon paragraph 28 of the above-mentioned judgment wherein it was held that adjudication of forgery, cheating or use of forged documents in relation to a settlement deed will always carry a civil element and hence there cannot be a general proposition that whenever dispute involves a civil element, a criminal proceeding cannot go on. It has further been held that quashing ought not to be permitted on the sole ground of the civil suit as the same will encourage unscrupulous litigants to defeat

criminal prosecution by instituting civil proceedings.

14. It has also been submitted that the final form has also been wrongly submitted by the investigating officer by way of giving his own opinion that the case appears to be civil in nature. It is precisely the reason why the learned Magistrate differed with the said final form and took cognizance.

15. The crux of the argument advanced on behalf of the O.P. No. 2 is thus that the criminal offences of forgery and cheating being made out against the petitioner and others, the proceedings are not fit to be quashed at the threshold jurisdiction u/s 482 Cr.P.C. and the proper course would be to permit the trial to proceed in accordance with law by adducing evidence.

16. I have heard the rival contentions of both the parties and have gone through the entire materials on record including the affidavits filed by both the parties. The facts leading to the present criminal prosecution have been stated in detail in the foregoing paragraphs discussing the submissions of both the parties.

17. The records of the case revealed that there are certain facts emanating from the FIR itself which further stands supported by the counter affidavit filed on behalf of the O.P. NO.2.

18. Upon perusal of the FIR itself, it appears that the facts narrated by the OP No.2, disclose the following facts:-

1) Preparation of a forged succession certificate by the late father of the petitioner (Ishwar Dayal Sinha) way back in the year 2001/02.

2) The said factum of preparation of forged documents had come to the knowledge of the father of the OP No.2 in the year 2014 itself when he took recourse to civil remedy by way of filing of an application before the Circle Officer.

3) A jamabandi No. 48 was created, although wrongfully, in the name of the petitioner's father.

19. The Counter Affidavit filed on behalf of the O.P. No.2, besides admitting the facts narrated in the FIR, disclosed certain other developments which took place between the year 2014 till the filing of the FIR and even thereafter. These admitted facts are as follows: -

a) Recourse to invoking the revenue laws were taken between the period 2014 to 2022.

b) Mutation case No. 3263/2013-14 filed by the father of O.P. No.2 was rejected vide order dated 27-02-2014 by Circle Officer Punpun.

c) Another Mutation case No. 4345/2014-15 filed by father of O.P. No.2 and decided in his favour was set aside by order dated 12.04.2017 passed by DCLR, Masaurhi in Appeal No. 22/2016-17 filed by the late father of petitioner.

d) Order of DCLR, Masaurhi dated 12.04.2017 was upheld as the revision filed by the OP No.2, against the said order stood dismissed by the Additional Collector, Patna vide order dated 13.12.2021.

e) The aforesaid order dated 13.12.2021 was further assailed before the Bihar Land Tribunal, Patna by way of filing BLT Case No. 429 of 2022 which remained pending adjudication for long (However, it appears from a subsequent affidavit of OP No.2 that the learned BLT has remitted the matter back to the Additional Collector, Patna for fresh adjudication vide an order dated 20.12.2024, during pendency of the present application).

f) It is also admitted that on 06.04.2021, the OP No.2 has also filed a Title Suit bearing T.S. Case

No. 152 of 2021, in the Court of Ld. Sub-Judge, Patna, to declare the sale deed dated 28.10.2020 as null and void and for other ancillary reliefs which is still pending adjudication.

20. At this stage, it may however be noted that the FIR did not disclose about the order of the revenue authority passed in favour of the father of the petitioner in the appellate and revisional jurisdictions and that a Title Suit with respect to the concerned land was also pending between the parties which was filed by the father of the O.P. No. 2 himself. The non-disclosure of these material facts in the FIR can also be termed as ‘suppression of relevant facts’ having a direct bearing and nexus with the allegations made in the FIR.

21. The sequence of events and dates mentioned in the foregoing paragraph relating to the civil litigations assume significance, as the present FIR came to be lodged on 08.05.2022, after the O.P. No.2 seems to have exhausted other remedies, having lost before some authorities and the proceedings still remaining pending before few. The law is well-settled that a criminal case cannot be used as a short-cut method or a circuitous tool for achieving such results which could not be done by way of civil proceedings. The judgment of a Three-

Judges Bench of Hon'ble Supreme Court passed in the case of ***Chandrapal Singh & Ors.*** (supra), lays down very clearly and unequivocally the fact that the jurisdiction of the criminal courts cannot be invoked by chagrined and frustrated litigants for giving vent to their frustration. The extract of paragraph 14 of the said judgment is being quoted hereunder:

> *"**14.** .... We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under Section 482 CrPC."*

22. The above-mentioned judgment was taken note of and relied upon by several subsequent judicial pronouncements including ***Kishan Singh*** (*supra*) and ***Nazibul Rahim Khan & Ors.*** (*supra*). This court is totally conscious of the fact that mere availability or pendency of civil remedies cannot itself be a ground to quash a criminal proceeding but it is

also a fact that under certain conditions where the act alleged would predominantly be a civil wrong, such an act would not constitute a criminal offence. The Courts of law cannot be permitted to be employed to abuse the process of law, as held in the case of ***Urmila Devi vs. Balram***, reported in ***2025 SCC OnLine SC 1574***. Paragraph nos.8.6 and 8.9 of the said judgment are being reproduced hereinbelow :

> *"**8.6.** It is writ large on the face of the record that the complaint case has been employed as a circuitous tool to abuse the process of law, especially after the complainant-respondent No. 1 failed to pursue the remedies available to it. ....*
>
> ***8.9.** In R.K. Vijayasarathy, this Court held that while exercising powers under Section 482 of the Cr. P.C., a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Recently, in Vishal Noble Singh v. State of Uttar Pradesh, 2024 SCC OnLine SC 1680, this Court held that courts have to be vigilant to ensure that the machinery of criminal justice is not misused for achieving oblique motives and agendas. Tacitly endorsing such misuse only unnecessarily burdens the courts and the criminal justice system. In Anand Kumar Mohatta, this Court, whilst quashing the FIR and chargesheet therein, highlighted the following words of this Court in State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699, that describe the fundamental principle for exercise of powers under Section 482 of the Cr. P.C.:*
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> > *"7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be*

an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice."

23. This Court would now advert to the objection raised on behalf of the OP No.2 that since criminal offences of forgery and cheating are involved in the present case, the case should not be quashed on the ground of the dispute being of civil nature. Upon perusal of the allegations made in the FIR and other materials on record, it is gathered that the allegation of preparing of forged document is confined to the late father of the petitioner which was done in 2001/02 and as regards the petitioner, there is virtually no allegation of creating forged documents rather the allegation as against him is that he, in connivance of his brothers, sold off a part of the property falling in share of the OP No.2. In this regard, the Court has noticed the fact that the petitioner and the informant are agnates and the dispute between the two branches is going on since long. It is also a fact as appearing from the FIR itself, that a jamabandi No.48 was also created in the name of the petitioner's father. In

the background of such facts, selling of the portion of land in question would not involve the offence of forgery.

24. At this stage reference to the case of ***Md. Ibrahim*** (*supra*) would be relevant as under similar circumstances, the question for consideration in the said case was also as to whether the allegations even if accepted in its entirety, would disclose the ingredients of offence of forgery. Section 464 IPC deals with making of false documents or false electronic record. Paragraph nos. 14, 15, 16 and 17 of ***Md. Ibrahim*** (*supra*) are being quoted for further clarity on the issue:

> *"**14.** An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:*
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> *1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.*
>
> *2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.*
>
> *3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.*

In short, a person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.

15. *The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of "false documents". It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.*

16. *<u>There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf.</u> When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or*

> *executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.*
>
> ***17.*** *When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."*
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> *(emphasis supplied)*

25. The case of ***Md. Ibrahim*** (*supra*) was also considered subsequently in the case of ***Sheila Sebastian v. R. Jawaharaj***, reported in ***(2018) 7 SCC 581****,* wherein it was clearly observed in paragraph 25 thereof that a charge of forgery can not be imposed on a person who is not the maker of the same. Explanation 2 to section 464 IPC further clarifies that, for constitution of an offence of forgery under section 464, it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not

liable for the offence of forgery. The words are clear and unambiguous leaving no scope of any interpretation.

26. The aforementioned judgment makes it clear that in the present facts and circumstances of the case where the property in question originally belongs to his ancestors and there even existed a mutation and a separate jamabandi created in the name of his father, by selling of such property, he has not claimed to be someone else, nor has he claimed that he has been authorised by someone else for execution of sale deed and he is not the maker/author of the document which is alleged to be forged. The existence of several civil proceedings between the parties who are agnates, is also a pointer towards the fact that the petitioner is also claiming title and ownership on the property in question and thus the natural and inescapable inference would be that he has acted under a bonafide belief while executing the sale deed, even though it may be assumed that the property in question does not actually belong to him. In such circumstances, an allegation of forgery is not made out against the petitioner.

27. The next issue for consideration is the contention on behalf of the petitioner with regard to the fact that no offence of cheating is even made out as against the petitioner.

The essential ingredients of the offence of 'cheating' may be examined which are as follows:

(i) Deception of a person;
(ii) Fraudulent or dishonest inducement given by a person intentionally causing another person to deliver any property; and
(iii) *mens rea* of the accused at the time of making inducement.

28. Thus, *sine qua non* for an offence of cheating is "fraudulence", "dishonesty" or "intentional inducement" and the absence of these elements would debase the offence of cheating, as has been held by plethora of judgments and is clear by way of the statute itself.

29. This court would now gainfully refer to paragraph nos.20, 21 and 22 of ***Md. Ibrahim*** (*supra*) on the point of applicability of section 420 of the IPC while dealing with the issue of execution of sale deed, as hereunder:-

> ***20.*** *When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.*
> ***21.*** *It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or*

omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

***22.** As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code."*

30. Upon analysis of the facts of the present case also, it is gathered that the complaint/FIR has not been lodged by the purchaser of the land in question and in fact no case of making a false and misleading representation has been lodged by the purchaser. It is also a fact that the petitioner while executing the sale deed did not pretend to be the informant, thus it is not a case of any fraudulent impersonation for the purposes of deceiving. It thus leads to the irresistible conclusion that in the present facts also, the ingredients of cheating are not present and the act of the petitioner cannot be said to constitute an offence under section 420 of the IPC and the case of the petitioner falls within the ambit of the law laid down in the case

of ***Md. Ibrahim*** (*supra*).

31. The entire discussion takes us back to the focal point of consideration of civil dispute being given a criminal colour and whether the continuance of such criminal proceedings, would amount to abuse of the process of the Court. It would be apt at this stage to refer to the case of ***Usha Chakraborty v. State of W.B.***, reported in ***(2023) 15 SCC 135***, paragraph nos. 21, 22 and 23 are being quoted hereunder:

> *"**21.** The factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature. The appellants and the respondents have given a cloak of criminal offence in the issue. In such circumstance when the respondent had already resorted to the available civil remedy and it is pending, going by the decision in Paramjeet Batra [Paramjeet Batra v. State of Uttarakhand, (2013) 11 SCC 673 : (2012) 4 SCC (Cri) 76] , the High Court would have quashed the criminal proceedings to prevent the abuse of the process of the Court but for the concealment.*
>
> ***22.** In the aforesaid circumstances, coupled with the fact that in respect of the issue involved, which is of civil nature, the respondent had already approached the jurisdictional civil court by instituting a civil suit and it is pending, there can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceedings as weapon of harassment against the appellants.......*
>
> ***23.** For all these reasons, we are of the considered view that this case invites invocation of the power under Section 482CrPC to quash the FIR registered based on*

> *the direction of the Magistrate Court in the aforestated application and all further proceeding in pursuance thereof. Also, we have no hesitation to hold that permitting continuance of the criminal proceedings against the appellants in the aforesaid circumstances would result in abuse of the process of court and also in miscarriage of justice."*

32. Also in the case of ***GHCL Employees Stock Option Trust vs. India Infoline Ltd.***, reported in ***(2013) 4 SCC 505***, it has been held that although the offences of breach of trust or cheating are both civil wrong and criminal offence, but under certain situation where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence.

33. Besides the above issue of the present case being purely of civil dispute being given a cloak of criminal offence, the issues relating to the prosecution being malicious and inordinately delayed would also need consideration. The facts of the case reveal that the act of the alleged forgery, committed in the year 2001-02 by the father of the petitioner had come to the knowledge of the informant's side in the year 2014 itself and from the year 2014 to 2021, all possible remedies under the revenue laws and the civil remedy by way of title suit, were taken recourse to and after no success having been achieved under the said proceedings in all these years, the present criminal case came to be instituted in the year 2022. It

has been held by way of several judicial pronouncements that criminal proceedings cannot be permitted to be employed with malafide intent of causing harassment to the other side. In this regard a reference may be made at this stage to the case of ***Nazibul Rahim Khan and Ors.*** (*supra*) and paragraph 27 thereof is being reproduced hereinbelow:-

> "**27.** The Impugned Judgment would, thus, require interdiction at our hands. We are further fortified in our approach by the pronouncement in *Kishan Singh* v. *Gurpal Singh*, (2010) 8 SCC 775 : (2010) 3 SCC (Civ) 583 : (2010) 3 SCC (Cri) 1091, wherein at Paragraph 22, it was stated by a Bench of 2 learned Judges:
>
> '*22. In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In*

such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Vide Chandrapal Singh *v.* Maharaj Singh *[(1982) 1 SCC 66 : 1982 SCC (Cri) 249 : AIR 1982 SC 1238]*; State of Haryana *v.* Bhajan Lal *[1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604]*; G. Sagar Suri *v.* State of U.P. *[(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : (2000) 100 COMP CAS 613 : AIR 2000 SC 754]; and* Gorige Pentaiah *v.* State of A.P. *[(2008) 12 SCC 531 : (2009) 1 SCC (Cri) 446]).”*

34. This court would now come to the argument of the opposite party no.2 that the criminal proceedings ought not to be quashed at threshold stage but the party should be permitted to adduce evidence during trial. The law is well settled that issuance of summons in a criminal case is a serious matter and cannot be lightly resorted to as it has serious ramifications and consequences. In the case of ***Pepsi Foods Ltd. v. Judicial Magistrate***, reported in ***(1998) 5 SCC 749***, it has been held that the summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is undoubtedly a matter of deep concern for a person having been summoned in connection with a criminal case, who has committed no offence, has no criminal background and

holds some reputation in the society. The petitioner herein is also working on the post of General Manager, Ordinance Factory, Ministry of Defence and criminal proceedings have been initiated against him for essentially a civil dispute within the family. Such proceedings against the person which arise out of some family dispute relating to property and if malafide is apparent, the courts may well exercise their inherent powers to quash the proceeding even at the threshold/ preliminary stage, if the case is not made out. In this context, paragraph nos.14 and 15 of ***GHCL Employees Stock Option Trust*** *(supra)* are being relied upon and are being reproduced hereinbelow as under:-

> *"**14.** Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record.*
> ***15.** In Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] this Court held as under: (SCC p. 695, para 7)*
>
> *"7. The legal position is well settled that when a prosecution at the initial stage is asked*

to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. <u>This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage</u>."

(emphasis supplied)

35. So far as the impugned order taking cognizance is concerned, the same also appears to be palpably erroneous, in view of the fact that it has been clearly recorded that after perusal of the case record, Case diary and the final report, the learned Magistrate has found the case to be of civil nature. However, in the same breath, mentioning paragraphs 1, 4 and 5 of the case diary, he has recorded his finding that there is sufficient material on record to make out a *prima facie* case against the accused persons. There is a conflict between the two statements which cannot be reconciled. Moreover, so far as these paragraphs are concerned, I find from the perusal of the case

diary that para 1 is the entire reproduction of the FIR, para 4 is the re statement of the informant himself, while para 5 contains the statements of the own brother of the informant which are only in the nature of reiteration of the facts already narrated in the FIR, which do not disclose a criminal offence against the petitioner, rather is only suggestive of some wrong having been committed by the late father of the petitioner long time back which had come to the knowledge of the informant's side, admittedly in the year 2014 and recourse to several civil remedies was taken, as has been exhaustively enunciated in the foregoing paragraphs.

36. It is precisely for this reason that the investigating agency after having undertaken thorough investigation submitted a final form holding the dispute to be of civil nature. The contention made on the behalf of the O.P. No.2 that the charge-sheet/final report was filed in haste and is only based upon the personal opinion of the I.O., is bereft of any merit as the said final report was submitted 20.08.2022 and is based upon the materials collected during the investigation, inspection of the place of occurrence, statement of the informant and other witnesses, Report 1, Supervision Note-cum- Report 2 and other circumstantial evidence. It has been clearly recorded

in the final report as under:

> "कांड में अबतक के अनुसंधान घटनास्थल के निरीक्षण, वादियों एवं साक्षियों का बयान, प्रतिवेदन 1, पर्यवेक्षण टिप्पणी सह अंतिम प्रतिवेदन, प्रतिवेदन 2 सह अंतिम आदेश एवं परिस्थतिजनक साक्ष्य से इस कांड का धारा 406/420/467/468/471/34 भा0द0वि0 के अंतर्गत यह कांड दीवानी प्रकृति का होना पाया गया है एवं कांड को दीवानी प्रकृति में समर्पित करने का आदेश वरीय पुलिस अधीक्षक महोदय द्वारा दिया गया है।"

37. Thus, there is no apparent flaw in the above-mentioned Final Report and the impugned order differing with the same, rather has no just or rational basis.

38. This Court is totally conscious of the fact that the inherent power under section 482 Cr.P.C./ 528 B.N.S.S. is to be used sparingly but it is also a fact that in appropriate cases where criminal offence is not made out on the face of the allegations and is also manifestly attended with malafide, this court would be failing in its bounden duty, if it does not interfere with such criminal prosecution, and allowing such vexatious proceedings to continue, would only amount to miscarriage of justice and abuse of the process of law. The law is clear that there is no embargo on the exercise of inherent power where abuse of the process of the court or any other extraordinary situation invites the court's jurisdiction under section 482 Cr.P.C./528 B.N.S.S.

39. The present case would fall into the category of

one such instance of being an appropriate case where the judicial discretion is to be exercised by invoking the inherent powers under section 482 of Cr.P.C. in order to prevent the abuse of the process of the Court and in the interest of justice. The present case falls within the four corners of category (1) and (7) of ***State of Haryana v. Bhajan Lal,*** *reported in* ***1992 Supp (1) SCC 335*** which are as under :-

> **"102………**
>
> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *……………….*
>
> *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

40. In view of the entire foregoing discussions, this court comes to a considered conclusion that the criminal prosecution against the petitioner warrants interference on grounds aforementioned which includes, the allegations predominantly giving rise to and constituting a "civil wrong" with no " element of criminality" and does not satisfy the basic ingredients of a criminal offence, coupled with the inordinate

and unexplained delay pointing towards a prosecution which is apparently attended with malafide and the same being vexatious. Considering that the case of the petitioner squarely falls within the ambit of the law laid down in the case of **Md. Ibrahim** (supra), this court would, without any hesitation, proceed to quash the impugned order dated 27.04.2023, passed by the learned Additional Chief Judicial Magistarte- VI, Patna City, Patna in connection with Gaurichak P.S. Case No. 275 of 2022 and all prosecution arising therefrom, so far as it relates to the petitioner.

41. Accordingly, the present application is allowed.

42. However, it is made clear that any observation made by this court in the present order/judgment is purely confined to the criminal proceedings and it will have no bearing or impact upon any civil proceedings/ litigations between the parties which is pending adjudication.

(Soni Shrivastava, J)

anand/-

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