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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.1 OF 2021

1. Dilip Visumal Aswani,
Aged 50 Years,
Occupation : Agriculturist,
R/o. Plot No.9,
Chhapru Nagar Road,
Chapru Nagar Chowk,
Nagpur.
2. Bhavesh Tulsidas Aswani,
Aged 30 Years,
Occupation : Agriculturist,
R/o. Plot No.9,
Chhapru Nagar Road,
Chapru Nagar Chowk,
Nagpur.

..... APPLICANTS

// VERSUS //

1. Kamlabai Zabbulal Yadao,
Aged 60 Years,
Occupation : Housewife,
R/o. Bhilgaon,
Tahsil Kamptee,
District : Nagpur.
2. State of Maharashtra, through
its Police Station Officer,
Police Station New Kamptee,
Tahsil Kamptee, Nagpur City,
Nagpur.

.... NON-APPLICANTS

Mr. Nitin Bargat, Advocate for applicants.
Mr. Satish Uke, Advocate for non-applicant No.1.
Mr. Nikhil Joshi, APP for non-applicant No.2/State.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 05.02.2026
PRONOUNCED ON : 26.02.2026

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JUDGMENT :

1. Heard.
2. **Admit.**
3. Heard finally with the consent of the learned Counsel for the parties.
4. By this application, the applicants are seeking quashing of the First Information Report (hereinafter referred to as "FIR") in connection with Crime No.410/2020 registered with Kamptee Police Station, District Nagpur for the offence punishable under Sections 207, 208, 209, 420, 468, 571, 120-B of the Indian Penal Code (hereinafter referred to as "IPC").
5. Brief facts which are necessary for the disposal of the present application is as under:

The property in dispute P.H. No.18 out of Survey No.148/3-A admeasuring 1.94 H.R., originally owned by Zabbulal Bindalal Yadao situated at Mouza Ghorpad, Tahsil Kamptee. On 18.04.2011, said Zabbulal entered into an agreement in favour of the present applicants to sell the said property. Accordingly, the earnest amount of Rs.13,48,239/- was paid by cheque and cash. As per the agreement, Zabbulal Yadao original owner was required to perform certain part of contract so as to get measure the land from the T.I.L.R. and thereafter, he has to execute the said sale deed. However, said Zabbulal Yadao has not performed

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his part of contract and not measured the land. The applicants after issuance of notice, though present before the Sub-Registrar office for execution of sale deed on 30.07.2014. Original owner Zabbulal Yadao failed to come there and to execute the sale deed. The applicants have sworn an affidavit to show their presence in the Sub-Registrar's office. As original owner failed to execute the sale deed as agreed, the applicants preferred Special Civil Suit No.662/2014 for Specific Performance of Contract on 22.08.2014. On 11.11.2014, said Zabbulal Yadao had filed written statement and reply and admitted that he received the earnest amount, but denied the execution of agreement to sale. The Civil Judge Senior Division by way of injunction order restrained Zabbulal Yadao to create third party interest and to alienate the property in any manner. On 01.08.2016, he filed an amendment application. During the pendency of the amendment application on 30.08.2016 said Zabbulal Yadao died and his legal heirs are brought on record. During pendency of the said suit, it revealed to the applicants that the legal heirs of Zabbulal Yadao entered into an agreement with Ramesh Karemore and decided to form the partnership firm and accordingly, they formed a partnership firm under the name and style as 'Shri Trimurti Builders and Developers'. The partnership deed was executed on 27.01.2017. On 07.02.2017, non-applicant No.1, who is the wife of Zabbulal Yadao and her daughters executed a relinquishment

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deed in respect of the suit property in favour of son of non-applicant No.1 Sushil Yadao. It is contention of the present applicants that the legal heirs of Zabbulal Yadao started harassing the applicants to withdraw the suit. To pressurize the present applicants said Sushil Yadao lodged the complaints against the present applicants on 26.11.2017 with the police. The Investigating Officer issued a notice to the applicants to remain present. In response to the notice, the applicants produced all documents, therefore, no further action was taken by the police against them. On 15.12.2017, applicants issued notice to the legal heirs of Zabbulal Yadao and the partners. The legal heirs of Zabbulal Yadao replied the said notice on 20.12.2017.

6. As the suit was pending against the non-applicant No.1 and other legal heirs. One Yuvraj Humne appeared in Civil Suit on behalf of the legal heirs of Zabbulal Yadao on the ground that the legal heirs are not in a position to engage the counsel as their financial position is weak. But, the said application at Exh.77 was rejected. On 06.12.2017 Sushil Yadao filed a complaint before the Magistrate. On 11.02.2019 the said complaint was rejected, therefore, they filed a complaint against the police on 07.04.2018. The said complaint was also rejected on 11.07.2018. On 20.08.2018, the son of the non-applicant

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No.1 filed application under Section 340 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") in Civil Suit. The said application came to be rejected on 17.03.2020. Subsequent to the rejection of the application under Section 340 of Cr.P.C., they filed an application for rejection of plaint on 27.04.2018. The said application was also rejected on 17.03.2020. As the non-applicant No.1 and the other legal heirs were unsuccessful in the various litigations filed by them. They have filed a RCS No.74/2018 on 09.07.2018. Again on 04.06.2019 another application under Section 340 of Cr.P.C. in RCS No.74/2018 was filed. After hearing both sides, the Civil Judge Junior Division stayed the Regular Civil Suit i.e. RCS No.74/2018. On 19.08.2019 again son of the non-applicant No.1 Sushil Yadao filed a MJC No.270/2018 under Section 340 of Cr.P.C. The said MJC was rejected on 17.03.2020. During the pendency of the suit filed by the applicants as well as the non-applicant No.1, the son of the non-applicant No.1 filed an application No.36/N.A.P.-34/2018-2019 Mouza Ghorpad for converting land for non-agriculture purpose. The Tahsildar, Kamptee, despite pendency of the suits, granted permission to convert land in non-agriculture. Thereafter, on 08.06.2020 the non-applicant No.1 filed another complaint before the learned Judicial Magistrate First Class bearing No.292/2020. The prayer of the present non-applicant No.1 and other legal heirs to issue direction under

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Section 156(3) of Cr.P.C. was rejected by the learned Judicial Magistrate First Class, Kamptee on 15.07.2020 and the complaint was put for verification. The non-applicant No.1 did not appear for verification and challenged the order of the learned Judicial Magistrate First Class before the learned Additional Sessions Judge, Nagpur without joining the applicants as a necessary party. The learned Additional Sessions Judge, Nagpur, allowed the Criminal Revision Application No.161/2020. The said revision was allowed on 06.08.2020 and the matter is remanded back to the learned Judicial Magistrate First Class, Kamptee to decide afresh. On 17.08.2020, the learned Judicial Magistrate First Class, Kamptee, issued a direction to register the FIR. In view of that, the FIR was registered against the present applicants.

7. As per the recitals of the FIR, it was alleged that the applicants have prepared a forged agreement to sale to grab the property which is ancestral property and accused No.1 has signed on the said agreement of sale by forging the signature of the husband of the non-applicant No.1 and the witnesses are also fake and thereby cheated the complainant. On the basis of the said report, police have registered the crime against the present applicants.

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8. The present application now filed by the applicants for quashing of the FIR. Learned counsel for the applicants Mr. Nitin Bargat, submitted that from the entire facts and circumstances it reveals that the nature of the dispute is civil in nature. The husband of the non-applicant No.1 entered into an agreement to sale the said property and accepted the earnest amount. During the life time the original owner, the husband of the non-applicant No.1 never contended that he has not received the earnest amount. His defence before the trial Court shows that he admitted that he received the earnest amount. His only contention is that he got acquaintance with the present applicants through one Umashankar Marothe as he was in need of financial assistance and the loan amount was supposed to be returned to Mr. Umashankar Marothe. He denied execution of the agreement of sale, but his contention before the Civil Court was never that his signature was forged on the agreement to sale. As the non-applicant No.1 and other legal heirs could not succeed in any of the litigation though they have filed the various applications only to harass the present applicants, this false FIR came to be lodged. He submitted that after going through the entire documents even the civil suits and various applications filed by the non-applicant No.1, it reveals that the dispute is in the nature of civil dispute and no criminal offence is made out. He submitted that intention has to be gathered from the

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circumstances. From the recitals of the FIR and documents nowhere discloses that with a dishonest intention the applicants entered into an agreement to grab the property of the original owner. On the contrary, written statement filed by the original owner before the Civil Court shows that he admitted he received the earnest amount. This fact is also considered by the Civil Court while deciding the interim application for injunction and the learned Civil Judge Senior Division, Nagpur, specifically observed that the suit property which stands in the name of the defendant. The agreement came to be executed on which the earnest amount was paid by cash and cheque. The defendant admitted about payment received by cheque. Certain conditions which are required to be fulfilled for execution of sale deed are not complied by the defendant and the execution of sale deed was not done and restrained the defendant from creating any third party interest or alienating the suit property. He submitted that various attempts were made by the non-applicant No.1 and other legal heirs to implicate the present accused in the criminal offence, but all attempts are invain, and thereafter this FIR came to be lodged. Learned Magistrate has rightly considered that the dispute is of a civil nature and earlier complaints were rejected. The complaint which was filed by the non-applicant No.1 was also not considered by the learned Judicial Magistrate First Class, Kamptee and initially no directions were issued to register the

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FIR. The learned Additional Sessions Judge, Nagpur fail to consider all these aspects and the earlier order is passed by the Civil Court and without hearing the present applicants issued directions to the Judicial Magistrate First Class to hear the complaint afresh and issued appropriate directions. The order passed by the learned Additional Sessions Judge, Nagpur, is erroneous and liable to be quashed and set aside. In support of his contention he placed reliance on **Manharibhai Muljibhai Kakadia and Anr. vs. Shaileshbhai Mohanbhai Patel and Ors.** reported in **2012 ALL MR (Cri) 4105 (S.C.)**

9. Per contra, learned APP Mr. Nikhil Joshi for the State strongly opposed the said contention and submitted that the FIR is registered on the basis of the allegations that the applicants have forged the signature of the original owner and therefore, investigation is required to ascertain the said fact. He submitted that from the recitals of the FIR, the *prima facie* offence is made out and therefore, the application deserves to be rejected.

10. Learned counsel Mr. Satish Uke for the non-applicant No.1 vehemently submitted that the complaint filed by the non-applicant No.1 after following the guidelines issued in the case of **Priyanka Srivastava Vs. State of U.P.[AIR 2015 SC (CRI) 800]**. He submitted that the FIR remitted back to the learned Judicial Magistrate First Class to hear the same afresh.

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The learned Magistrate after considering the fact that the legal heirs, who were having undivided shares in the suit property and without their consent by manipulating the deceased the agreement to sale is got executed, issued directions to register the FIR which is proper, legal one. He submitted that merely because some civil transaction is pending is not sufficient to hold that the dispute is of a civil nature. Sometimes even though the dispute is of a civil nature, the element of criminality whether existed or not is to be considered. Here in the present case, with an intention to deceive the non-applicant No.1 and other legal heirs, the applicants forged the signature of the original owner. The issue regarding the forgery is the matter of investigation and therefore, at this stage, it is not a fit case to quash the FIR. Learned counsel has also placed on record written notes of arguments. In support of his contention he placed reliance on **S. N. Vijayalakshmi and others Vs. State of Karnataka** reported in **2025 SCC OnLine SC 1575**.

11. Before entering into the merits of the entire issue involved, it is necessary to consider the law regarding quashing of the FIR in the case of **Paramjeet Batra vs State Of Uttarakhand and Ors.** reported in **(2013) 11 SCC 673**, wherein the Hon'ble Apex Court in paragraph No.12 has observed as under:

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"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court."

12. In another judgment in the case of **Vesa Holding (P). Ltd. Vs. State of Kerla (2015) 8 SCC 293**, wherein the Hon'ble Apex Court in paragraph No.13 observed as under:

"13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion in view of these facts allowing the police investigation to

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continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings."

13. In the decision of **State of Haryana and others Vs Bhajan Lal and others** reported in **1992 Supp. (1) SCC 335**, the Hon'ble Apex Court has considered the statutory provisions has also the earlier decisions and laid down the parameters which reads as under:

"(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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just

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conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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."

14. By referring all these judgments in the case of **Usha Chakraborty and another Vs. State of West Bengal and another, (2023) 15 SCC 135**, the Hon'ble Apex Court has considered the exercise of powers of quashing and reiterated the basic requirement and ingredients to bring home the accusations in different provisions of IPC.

15. Similar view is taken by the Hon'ble Apex Court in the case of **Anukul Singh Vs. State of Uttar Pradesh and Anr. in Criminal Appeal No.4250/2025 decided on 24.09.2025**, on the basis of various judgments. Thus, what is to be considered is that while exercising the inherent jurisdiction under Section 482 of Cr.P.C., which is though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the test specifically laid down in section itself.

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16. In the light of the well settled law as to the quashing of the FIR, the facts and circumstances of the present case are to be looked into.

17. Undisputedly, Zabbulal Yadao was the owner of land situated at Mouza Ghorpad P.H. No.18, Tahsal Kamptee, District Nagpur admeasuring 1.94 H.R. out of Survey No.148/3-A. The documents which is placed on record shows that he entered into an agreement to sale with the present applicants on 18.04.2011 and earnest amount is received by him to the tune of Rs.13,48,239/-. The documents further shows that as per the agreement to sale, he has to measure the land before execution of sale deed. Thus, some part of the contract was to be performed by him. As he has not executed the sale deed in favour of the present applicants, they have issued the notice to Advocate of the original owner Zabbulal Yadao dated 30.07.2014, indicating that they will remain present in the Registrar's office for execution of sale deed. Accordingly, they were present in the Registrar's office for execution of sale deed on 13.08.2014, but Zabbulal Yadao did not turn up. Therefore, they constrained to file Special Civil Suit No.662/2014. The said suit was filed by the applicants for specific performance. In response to the suit summons, Zabbulal Yadao filed his written statement and denied the contention of the applicants that he

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has executed the agreement of sale. But, he came with a case that he was in need of financial assistance, he got acquaintance with Mr. Umashankar Marothe at Nilam Lawns situated at Kamptee, who introduced himself as a property broker and moneylender. The said Umashankar Marothe agreed to help by way of financial assistance to him. Accordingly, he has obtained the amount through cheque No.755183 and 838157 from the said Umashankar Marothe. Said hand loan amount to be returned to Umashankar Marothe along with 2% interest. First time when he received the suit summons, he came to know that the agreement of sale is got executed, in fact, he has not executed any agreement to sale in favour of the present applicants. Thus, Mr. Zabbulal Yadao accepted that he received the consideration amount by cheque. Considering this aspect Civil Judge Senior Division has directed Zabbulal Yadao not to create any third party interest in the suit property during the proceedings of the suit.

18. The original owner Zabbulal Yadao, subsequently filed an application under Order VI Rule 17 of CPC seeking an amendment contending that he never agreed for sale of his agriculture property to anybody. However, during the pendency of this application, he died on 30.08.2016. The said application came to be rejected. Thereafter, the legal heirs of Zabbulal

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Yadao i.e. son of the said Zabbulal Yadao entered into an agreement with Ramesh Karemore and partnership deed was executed on 27.01.2017 to run a partnership firm under the name as 'Shri Trimurti Builders and Developers'. It is also undisputed that the son of the said Zabbulal Yadao namely Sushil Yadao lodged a complaint against the present applicants by addressing the application to the Police Inspector, Kamptee Police Station. It is alleged in the said complaint that the applicants have prepared the forged agreement to sale and the signature on the said agreement of sale is not of their father and thereby present applicants have committed an offence under Section 120-B, 209, 420, 468, 471 of the IPC. The Investigating Officer i.e. concerned Police Officer of the said Police Station issued the notice to the present applicants and present applicants produced some documents before the said police officer therefore, further action was not taken against the present applicants. In the meantime, on 15.12.2017 the present applicants have issued the notice to the legal heirs of the original owner Zabbulal Yadao. The said notice was replied by the legal heirs on 20.12.2017 with a similar contention. It is further contention of the legal heirs of the original owner that the said property is ancestral property and the legal heirs are having their undivided shares and their father cannot sale the said property without their consent. During the pendency of the suit, one

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Yuvraj Humne also appeared on behalf of the legal heirs with contention that due to the financial conditions, they are unable to engage the counsel. Under Order III Rule 1 of CPC, the said application came to be rejected by the 10th Joint Civil Judge Senior Division, Nagpur.

19. As the police have not taken cognizance of the complaint of the legal heirs of the original owner Zabbulal Yadao, they filed miscellaneous application before the learned Judicial Magistrate First Class, Kamptee bearing No.538/2017. The learned Magistrate has considered the said application and after going through the documents, he come to the conclusion that the alleged transactions is between father of the applicants therein and non-applicants, but during his lifetime the said transaction is not challenged. The civil litigation is pending between the parties. The allegations regarding fraud are not substantiated and therefore, rejected the application. Thereafter, another application was again filed bearing No.107/2018 before the learned Judicial Magistrate First Class, Kamptee. The learned Judicial Magistrate First Class has rejected the prayer of issuing the directions to register the FIR. The legal representatives of the original owner also filed an applications under Section 340 of Cr.P.C. below Exh.75 in the Special Suit, the same also rejected, then they have filed an application for return of the plaint the same was also rejected. The legal heirs of the original owner

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challenged the order of the learned Judicial Magistrate First Class rejecting the prayer to give direction under Section 156(3) of Cr.P.C. by preferring Criminal Revision Application No.161/2020. The said revision application is allowed and the Criminal Application No.292/2020 was again sent to the learned Judicial Magistrate First Class, Kamptee for deciding a fresh and thereafter the learned Magistrate allowed the application and FIR came to be registered against the present applicants.

20. Thus, it is undisputed that civil litigation was pending between the present applicants and original owner and after his death, the legal heirs of the original owner. As far as the allegation regarding forgery of the signature is concerned, it was never contended by the original owner that the document in dispute i.e. agreement to sale does not bears his signature, but it is a forged signature. He only stated that he has not executed any agreement to sale, but though he filed his written statement and also filed an application for amendment and none of the application discloses that he has challenged the signature on the agreement to sale. On the contrary, the pleading of the original owner in the written statement shows that though he has admitted that he has received the earnest amount, but come with the case that he has received the hand loan amount from one Marothe through the cheque which is mentioned in the

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agreement to sale. Thus, the contention of the non-applicant No.1 that the signature on the agreement to sale is a forged signature and the applicants have forged the same is not substantiated by the stand taken by the original owner in the written statement which is filed in a civil suit. It is apparent that the various applications were filed against the present applicants but the legal heirs of the original owner could not succeed in it and thereafter, the said FIR came to be lodged approximately after four years of the execution of the sale deed. It is pertinent to note that in the FIR lodged by the non-applicant No.1 against the present applicants, the aspect of civil litigation and filing of various applications as well as filing of the previous complaints which came to be rejected by the learned Magistrate, is not mentioned and this fact is suppressed while lodging the FIR.

21. The applicants are charged for the offence punishable under Sections 120-B, 420, 468, 471 read with Section 34 of the IPC. As per the allegations of non-applicant No.1, the applicants by hatching conspiracy, prepared the forged document agreement to sale which does not bear the signature of her husband Zabbulal Yadao. However, the recitals of the FIR nowhere disclose that it was the present applicants who have forged the signatures. On the contrary, the said stand taken in the FIR is contrary to the stand taken by the original owner in

the civil suit. Moreover, the earlier filing of the application before the police as well as previous complaint filed before the learned Judicial Magistrate First Class bearing No.538/2017 which came to be rejected, is suppressed by the present non-applicant No.1. The order passed by the learned Judicial Magistrate First Class below another complaint application No.107/2018 was also suppressed by the complainant. On the contrary, entire documents on record discloses civil transactions. It is true that a complaint discloses civil transaction may also have a criminal texture. Whether essential ingredients of criminal offence are present or not has to be judged by this Court and while judging the same it must be seen whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted, the criminal proceeding is to be quashed.

22. In the case of **Usha Chakraborty** (referred supra) wherein the Hon'ble Apex Court has considered all these aspects and held that the materials on record pertaining to the said pleadings instituted in the Civil Suit, produced in this proceeding would reveal that the respondent was in fact ousted from the membership of the trust. In the counter affidavit filed in this proceeding, the respondent has virtually admitted the pendency of the suit filed against his removal from the post of Secretary

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and the trusteeship and its pendency. The factum of passing of adverse orders in the interlocutory applications in the said Civil Suit as also the *prima facie* finding and conclusion arrived at by the Civil Court that the respondent stands removed from the post of Secretary and also from the trusteeship are also not disputed therein. Then, the question is why would the respondent conceal those relevant aspects? The indisputable and undisputed facts would reveal the existence of the civil dispute on removal of the respondent from the post of Secretary of the school as also from the trusteeship.

23. It is further held by the Hon'ble Apex Court that by non-disclosure the respondent has, in truth, concealed the existence of a pending civil suit between him and the appellants herein before a competent civil court which obviously is the causative incident for the respondent's allegation of perpetration of the aforesaid offences against the appellants.

24. It is further observed that 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** (supra), the High Court would have quashed the criminal proceedings to prevent the abuse of the process of the Court but for the concealment.

25. Here in the present case also, the pleading instituted in the civil suit wherein the original owner Zabbulal Yadao though have not accepted the execution of the agreement of sale, but have accepted the receipt of the earnest amount. Then, he made an attempt to amend the pleading which is not accepted by the civil Court, thereafter various applications and complaints are filed, the same are not disclosed in the FIR. There was non-disclosure by the non-applicant No.1 of filing of the civil suit against the present applicants and various order passed by the trial Courts.

26. Learned counsel for the non-applicant No.1 placed reliance on the decision of **S. N. Vijayalakshmi and others** (referred supra), wherein also the Hon'ble Apex Court has considered the judgment of **Usha Chakraborty and another** (referred supra) and also referred **Paramjeet Batra** (referred supra) and observed that whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint

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disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.

27. It is further observed that the obvious caveat being that the allegations, even if having a civil flavour to them, must *prima facie* disclose an overwhelming element of criminality. In the absence of the element of criminality, if both civil and criminal cases are allowed to continue, it will definitely amount to abuse of the process of the Court, which the Courts have always tried to prevent by putting a stop to any such criminal proceeding, where civil proceedings have already been instituted with regard to the same issue, and the element of criminality is absent. If such element is absent, the prosecution in question would have to be quashed.

28. At the same time, the allegations to be looked into in the light of the ingredients of the offence under Section 467 of IPC. The essential ingredients to constitute the offence punishable under this section are:

(i) *commission of forgery;*

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(ii) that such commission of forgery must be in relation to a document purporting to be

(a) a valuable property; or

(b) a will; or

(c) an authority to adopt a son; or

(d) which purports to give authority to any person to make or transfer any valuable security; or

(e) to receive the principle, interest or dividends thereon; or

(f) to receive or deliver any money, movable property or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or

(g) an acquittance or receipt for the delivery of any movable property or valuable security.

29. The requirement to constitute the offence punishable under Section 468 IPC are:

(i) Commission of forgery,

(ii) that he did so intending that the document or electronic record forged shall be used for the purpose of cheating.

30. The factual position in the present case would reveal that the dispute arose between the present applicants and the legal heirs of the original owner as to the agreement of sale executed by the original owner and after four years, the FIR came to be lodged by alleging that the signature on the agreement to sale is forged one. Even accepting the allegation in the FIR, which are

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not sufficient to constitute the offence punishable under Sections 467 and 468 of IPC.

31. As far as the offence punishable under Section 420 of IPC is concerned, to constitute the said offence there must be deception that the accused must have deceived someone; that by such deception the accused must induce a person:

(i) to deliver any property; or

(ii) to make, alter, destroy a whole or part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable property; or

(iii) that the accused must have done so dishonestly. The offence punishable under Section 120B, IPC, to constitute criminal conspiracy, there must be agreement between two or more persons. The agreement should be to do or cause to be done some illegal act, or some act which is not illegal, by illegal means, provided that where the agreement is other than one to commit an offence, the prosecution must further prove; or

(iv) that some act besides the agreement was done by or more of the parties in pursuance of it.

32. Now the question is whether the allegations in the aforesaid FIR are sufficient to constitute the alleged offence. Admittedly, the allegations levelled in the written statement are contrary to the FIR. Moreover, it is apparent that, the original owner never alleged that his signature on the said agreement to

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sale is forged one. Admittedly, the dispute appears to be civil in nature.

33. Here in the present case, a complaint disclosing civil transaction and my no stretch of imagination it can be said that there was intention since inception, and therefore, the offence under Section 420 of IPC is not made out in the present case. The offence under Section 467 or 468 of IPC are also not made out against the present applicants. As far as the conspiracy is concerned, except the bare allegation, there is absolutely no material to show that the applicants entered into an agreement to do an illegal act and in pursuance of the said illegal act, they have carried out further acts. Admittedly, there would not be a direct evidence available as far as the conspiracy is concerned, but there has to be some evidence to show the involvement of the present applicants in the conspiracy.

34. It is submitted by the learned counsel for the applicants that the revision was filed by the legal heirs of the original owner and the Sessions Judge has not considered that the applicants are not party to the said revision and the order of remitting back the application is passed behind the back of the present applicants. He submitted that admittedly, when the complaint was filed the applicants have no right to agitate their grievances however, when revision against the dismissal of complaint is

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filed, persons who are arraigned as an accused in the complaint have a right to be heard in such a revision application. He placed reliance on the decision of the Hon'ble Apex Court in the case of **Manharibhai Muljibhai Kakadia and Anr. vs. Shaileshbhai Mohanbhai Patel and Ors.** (referred supra) wherein the Hon'ble Apex Court has laid down the entire procedure when application is filed under Section 156(3) of Cr.P.C. as well as procedure is to be followed when complaint is filed under Section 200 of the Cr.P.C. It is observed by the Hon'ble Apex Court that Chapter XVI of the Code has Sections 204 to 210. Section 204 deals with the issuance of process by the Magistrate. The process is issued by the Magistrate if in his opinion there is sufficient ground for proceeding. Section 210 provides for procedure to be followed when there is complaint case and police investigation in respect of the same offence. It reads as under:

"Section 210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.—(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any

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offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

35. The Hon’ble Apex Court further held that Section 397 of the Code empowers the High Court or the Sessions Judge to call for and examine the record of any proceeding before any inferior court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety, *inter alia*, of any order passed by such inferior court. The powers of revision are concurrent with the High Court and the Sessions Judge. By virtue of Section 399, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of Section 401 and while doing so the provisions of sub-sections (2),(3),(4) and (5) of Section 401 apply to such power as far as possible.

36. It is further held by the Hon’ble Apex Court that Section 202 of the Code has twin objects; one, to enable the Magistrate to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being

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called upon to face an unnecessary, frivolous or meritless complaint and the other, to find out whether there is some material to support the allegations made in the complaint. The Magistrate has a duty to elicit all facts having regard to the interest of an absent accused person and also to bring to book a person or persons against whom the allegations have been made. To find out the above, the Magistrate himself may hold an inquiry under Section 202 of the Code or direct an investigation to be made by a police officer. The dismissal of the complaint under Section 203 is without doubt a pre-issuance of process stage. The Code does not permit an accused person to intervene in the course of inquiry by the Magistrate under Section 202. The legal position is no more *res integra* in this regard. More than five decades back, this Court in **Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and another (1961) 1 SCR 1** with reference to Section 202 of the Criminal Procedure Code, 1898 (corresponding to Section 202 of the present Code) held that the inquiry under Section 202 was for the purpose of ascertaining the truth or falsehood of the complaint, i.e., for ascertaining whether there was evidence in support of the complaint so as to justify the issuance of process and commencement of proceedings against the person concerned.

37. It is further held that the object of provisions of Section 202 was to enable the Magistrate to form an opinion as to

whether process should be issued or not and to remove from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath. It was further held that an accused person does not come into the picture at all till process is issued.

38. After considering the entire provisions under Section 156, 200, 201 to 204 and 210 the Hon'ble Apex Court held that:

"(i) There is a distinction to be drawn between the criminal complaint cases which are at the pre-cognizance stage and those at the post-cognizance stage. There is a further distinction to be drawn between the cases at the post-cognizance but pre-summoning stage and those at the post-summoning stage.

(2) It is only at the post-summoning stage that the respondents in a criminal complaint would answer the description of an 'accused'. Till then they are like any other member of the public. Therefore at the pre-summoning stage the question of their right to be heard in a revision petition by the complainant in their capacity as "accused" in terms of Section 401(2) CrPC does not arise.

3) At the post-cognizance but pre-summoning stage, a person against whom the complaint is filed might have a right to be heard under the rubric of 'other person' under Section 401(2) CrPC. If the learned MM has not taken the cognizance of the offence then no right whatsoever accrues to such "other person" to be heard in a revision petition.

(4) Further, it is not that in every revision petition filed by the complainant under Section 401(2) CrPC, a right of hearing has to be given to such "other person" or the accused against whom the criminal complaint has been filed. The right accrues only if the order to be passed in the revision petition is prejudicial to such person or the accused. An order giving a specific direction to the learned

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MM to either proceed with the case either at the post-cognizance or post-summoning stage or a direction to register an FIR with a direction to the learned MM to proceed thereafter might be orders prejudicial to the respondents in a criminal complaint which would therefore require them to be heard prior, to the passing of such order."

39. Thus, it is held by the Hon'ble Apex Court that by virtue of Section 401(2) of the Code, the suspects get right of hearing before revisional court although such order was passed without their participation. The right given to "accused" or "the other person" under Section 401(2) of being heard before the revisional court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.

40. In the light of the above observations, admittedly, in the revision petition before the Sessions Judge at the instance of complainant challenging the order of rejection of the prayer for

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issuance of the direction to register the FIR, wherein when the Sessions Judge come to the conclusion that the order is to be reversed and it is to be remitted back to the Magistrate then hearing to the accused was required.

41. Here in the present case, the conduct of the non-applicant No.1 can be seen from the circumstance that despite the various applications are rejected either by the civil Court or by the criminal Court and declined to take cognizance and specific observation that dispute is of civil nature but suppressing the earlier order passed by the learned Judicial Magistrate First Class, a new application was filed by the non-applicant No.1 and order was obtained to show she has not come before the court with a clean hands.

42. Thus, for invocation of the offence punishable under Section 420 of IPC, it is imperative that the accused should have induced the complainant to part with valuable security and that such inducement should at the inception, which is absent in the present case.

43. Thus, on a careful consideration of the facts and circumstances of the present case and by applying parameters laid down in various decisions and by applying the above principles to the facts of the present case, it is apparent that, the

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dispute between the present applicants and non-applicant No.2 is purely civil in nature and the essential ingredients of cheating or forgery are not *prima facie* made out. There is non-disclosure by the Non-applicant No.1 regarding pending of civil suit and various orders passed against her was concealed, which obviously in view of the decision of the Hon'ble Apex Court in the case of **Usha Chakraborty** (supra), is the causative incident.

44. As noticed above a bare perusal of the allegations and the ingredients would reveal that the allegations are vague and not sufficient to constitute the essential ingredients to constitute the alleged offence. Thus, it is an attempt by the non-applicant No.1 to implicate the present applicants in a criminal proceeding though the dispute involved is a civil nature.

45. In such circumstances, considering all above facts and circumstances I am of the considered opinion that this is a fit case, wherein the powers under Section 482 of Cr.P.C. to be exercised, and therefore, I proceed to pass the following order.

ORDER

(i) The application is **allowed**.

(ii) The First Information Report in connection with Crime No.410/2020 registered with Kamptee Police Station, District Nagpur for the offence punishable under Sections 207, 208, 209, 420, 468, 571 and 120-B of the Indian Penal Code, is hereby quashed and set aside to the extent of the present applicants.

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46. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

Sarkate.