Prakash Sheshmalji Jain & 2 Other(S) Vs State Of Gujarat & 1 Other(S)

R/Special Criminal Application No. 1721 Of 2017, Criminal Misc. Application (For Stay) No. 2 Of 2021

Court: Gujarat High Court

Date of Decision: Jan. 11, 2022

Acts Referred:
Constitution Of India, 1950 â€” Article 226#Code Of Criminal Procedure, 1973 â€” Section 155(2), 156(1), 482#Indian Penal Code, 1860 â€” Section 114, 419, 420, 427

Hon'ble Judges: Gita Gopi, J

Bench: Single Bench

Advocate: B. B. Naik, Viral M Pandya, Trusha K Patel, Pranay V Shah, Pranav Trivedi

Final Decision: Allowed

Judgement

Gita Gopi, J

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, the petitioners have prayed to quash and set aside the impugned

complaint being C.R. No. I Ã¢â‚¬" 154 of 2016 dated 19.12.2016 registered with Kheda Town Police Station, Kheda for the offences punishable under

Sections 420, 427 and 114 of IPC and all consequential proceedings initiated in pursuance thereof.

2. The facts, in a nutshell, as emerging from the record are as under;

The petitioners and the respondent-complainant are known to each other and were into the business of purchase and sale of lands as also of

constructing housing projects since last several years. It appears that the parties had jointly purchased several parcels of lands at different times and

had also undertaken the project of constructing residential schemes at different times.

2.1 It appears that in 2007, the petitioner No.1 along with his son Ã¢â‚¬" Sunny Prakashraj Jain and petitioner No.2 had jointly purchased land bearing

survey No.212/1/2 paiki, ad-measuring 2337 square metres, situated at Mouje Saijpur Bodha, Sub-District & District : Ahmedabad-6 (Naroda). It is the say of the petitioners that by creating false and fabricated Power of Attorney, Kamlesh Gangaram Mali, who is the son of respondent No.2-

complainant, had sold the aforesaid parcel of land to one of their relatives, named Ashokbhai Babulal Mali. It is the further say of the petitioners that

on 23.12.2014, said Kamlesh Gangaram Mali also created a false and fabricated declaration Affidavit and had presented the same before the Office

of Sub-Registrar along with the sale documents. The petitioners came to know about the above fraud only in March 2016 and therefore, they

immediately kept on hold all the sale agreements / sale deeds that were agreed to by and between the petitioners and the respondent-complainant. The

petitioner No.2 got a public notice published in the local newspaper declaring that the Power of Attorney is forged and fabricated. The petitioner No.2

also gave written complaints dated 03.08.2016, 22.08.2016 and 05.10.2016 with Krushnanagar Police Station, Ahmedabad City in this regard. It

appears that the petitioners had also instituted civil suits against said Kamlesh Gangaram Mali and others, which are reported to be pending.

2.2 On 19.12.2016 the respondent-complainant lodged the impugned complaint against the petitioners with Kheda Town Police Station, District :

Kheda under Sections 420, 427 and 114 of IPC inter alia alleging that the petitioners and the respondent-complainant had jointly purchased lands

bearing Block Nos. 56/1, 74/2, 81/2, 94, 56 paiki, 74/1, 75, 78, 79, 81/1, 83/1, ad-measuring 156 Bighas, situated at Village : Bavra, Taluka & District :

Kheda, from petitioner No.1, his son Ã¢â‚¬" Sunny Jain and one Mangirav Gangarav Mali, for a consideration of Rs. 6.11 crores (rounded off). The sale

deeds in respect of lands bearing Block Nos.56/1, 74/2, 81/2 and 94 were already executed; however, in respect of certain parcels of lands out of the

aforesaid lands bearing Block Nos.56 paiki, 74/1, 75, 78, 79, 81 paiki 1, 82 and 83 paiki 1, ad-measuring 71.43 Bighas, the petitioners refused to

execute the sale deed in favour of the respondent-complainant when they were presented before the Office of Sub-Registrar for registration on

27.10.2016 though the respondent-complainant had paid Rs.2.38 crores (rounded off) in respect of said parcels of lands (hereinafter referred to as the

subject lands). It is alleged that the petitioners did not appear before the Office of Sub-Registrar for getting the sale deed registered having pocketed

the money and therefore, a civil suit for specific performance was instituted against the petitioners before the civil Court at Mahemdabad. The

respondent-complainant has also filed a complaint with the Special Investigating Team (SIT) in this regard. Being aggrieved by the filing of the

impugned complaint, the petitioners have preferred the present petition.

3. Learned Senior Advocate Mr. B. B. Naik appearing with Mr. V. M. Pandya for the petitioners submitted that by filing the impugned complaint, the

respondent-complainant has given the civil disputes between him and the petitioners a criminal color. The petitioner No.1 and the respondent-

complainant were doing business on partnership basis since the year 1984. It was submitted that under the partnership, the respondent-complainant had to look after the construction works whereas the petitioner No.1 had to arrange the finances.

3.1 It was pointed out by learned Senior Advocate Mr. Naik that the first business deal of the parties took place in the year 1986 where they had to

develop a residential scheme under the name of Ã¢â,¬Å“Indraprasth TenementsÃ¢â,¬ in Naroda area of District : Ahmedabad along with one more Partner.

In the year 1996, the respondent-complainant had come with a proposal for the purchase of land ad-measuring 75,000 square yards situated at Adalaj

wherein the petitioner No.1 was to arrange for the finance and subsequently, the sale deed also came to be executed. In 2002 they jointly started a

residential scheme in the name of Ã¢â,¬Å“Rudraksh FlatsÃ¢â,¬. Thereafter, in the year 2006, the parcel of land purchased in 1996 was sold to a third party

and a year later, i.e. in 2007, they purchased a housing society named Ã¢â,¬Å“Rajdeep SocietyÃ¢â,¬â€‹.

3.2 It is submitted that in the year 2007, the respondent-complainant came with a proposal to purchase the subject lands, the finance for which was to

be arranged by petitioner No.1 and by one Mr. Gopalani and it was agreed upon by and between the parties that the respondent-complainant would

look after the work of maintaining the lands. In the year 2012, the petitioner No.1 and the respondent-complainant sold about 100 Bighas of land and

distributed the sale proceeded amongst themselves. Out of the said land, the respondent-complainant purchased 40 Bighas of land from the petitioners

for his own use. The remaining land is jointly owned by the petitioners and is not yet sold.

3.3 Learned Senior Advocate Mr. Naik referred to the grounds narrated in the petition and submitted that in the year 2012, the respondent-

complainant had come with a new proposal for the purchase of 26,500 square yards of land situated in Taluka : Kadi. It is stated that as petitioner

No.1 and the respondent-complainant were partners in ratio of their investments, the petitioner No.1 exchanged the land belonging to the respondent-

complainant with his holding of 80 Bighas of land situated at Mehamdavad and bought the entire land at Taluka : Kadi in his own name. It is submitted

on behalf of the petitioners that the accounts between the partners have not been settled since the year 1982. Around 35 Bighas of land is held by

petitioner No.1 and his family and 72 Bighas is held jointly by petitioner Nos.2 & 3. It is alleged that as part of the settlement of accounts, an amount

of Rs.16 Crores is to be recovered from the respondent-complainant.

3.4 Learned Senior Advocate Mr. Naik further contended that petitioner No.1 along with his son Ã¢â,¬" Sunny and petitioner No.2 jointly held the subject

land, which was purchased in the year 2007. Kamlesh Gangaram Mali, who is the son of the respondent-complainant, had created a false and

fabricated power of attorney and had managed to sell the land to his relative Ã¢â,¬" Ashokbhai Babulal Mali. The petitioner No.2 had never signed any

such power of attorney document. Further, in the year 2014, a false and fabricated declaration affidavit was also prepared and presented by said

Kamlesh Gangaram Mali before the Office of Sub-Registrar in the sale proceedings. By making malafide misrepresentation, Kamlesh Gangaram Mali had obtained the signatures of petitioner No.1 and his son Ã¢â‚¬" Sunny on the bogus power of attorney document. It is alleged that the land is situated in

the middle of the town and is having a market value between Rs.5 crores to Rs.6 crores but, the respondent-complainant executed the sale transaction

for a measly sale consideration of Rs.9 Lacs only. The petitioners have produced on record copies of the forged power of attorney as also the sale

deed in respect of land situated at Mouje Saijpur Bodha along with the opinion of the Hand-writing expert to fortify the aforesaid contention.

3.5 It was submitted that when the petitioners came to know about the above fraud in March 2016, they kept the sale agreement as also the sale deed

on hold with the respondent-complainant. The petitioner No.2 got a public notice issued in the local newspaper stating that the power of attorney has

been fabricated by Kamlesh Gangaram Mali and also lodged a complaint on 03.08.2016 against Kamlesh Gangaram Mali and his relative Ã¢â‚¬

Ashokbhai Mangilal Mali with Krushnagar Police Station. It is stated that petitioner Nos.1 & 2 have also filed a civil suit in this regard and in the suit

proceedings, the civil Court concerned has passed an order granting interim injunction against Kamlesh Gangaram Mali and his relative Ã¢â‚¬" Ashokbhai

Mangilal Mali. Thus, disputes arose between the petitioners and the respondent-complainant on account of the fraudulent act committed by Kamlesh

Gangaram Mali, the son of the respondent-complainant.

3.6 Learned Senior Advocate Mr. Naik further contended that the respondent-complainant has also suppressed material facts, as he has not averred

anything about the different business transactions that took place during the last 34 years. The petitioners have to recover huge amounts of money

from the respondent-complainant; however, to avoid the financial liability, the respondent-complainant has meticulously moved the police machinery.

Citing the fraudulent act committed by Kamlesh Gangaram Mali and his relative Ã¢â‚¬" Ashokbhai Mangilal Mali on account of which the petitioners had

to put on hold the execution of sale deed, it is stated that the petitioners have acted bonafidely and that no ingredients of the offence u/s.420, 427 and

114 of IPC are made out against them. There is nothing on record to suggest that the petitioners have committed any act with the intention to deceive

the respondent-complainant and / or any dishonest inducement has been made for delivery of property. Several transactions have taken place between

the parties and the transaction in respect of the subject land is one amongst them, which was done in the regular course of business. The execution of

the sale deeds has been kept on hold on account of the non-settlement of accounts between the parties. The respondent-complainant had to make

certain payments to petitioner Nos.2 & 3 in cash, which he did not make and therefore, the petitioners have every right to refuse execution of sale

deed in his favour. It was, accordingly, urged that the present petition may be allowed by quashing and setting aside the impugned complaint.

4. Learned Senior Advocate Mr. Naik placed reliance upon the following decisions:

(a) Alpic Finance Ltd. v. P. Sadasivan and another, AIR 2001 SC 1226.

(b) Inder Mohan Goswami and another v. State of Uttaranchal and others, (2007) 12 SCC 1.

(c) Chairman, Food Corporation of India and others v. Sudarsan Das, (2007) 14 SCC 766.

(d) B. Suresh Yadav v. Sharifa Bee and another, (2007) 13 SCC 107.

(e) Hridaya Ranjan Prasad Verma and others v. State of Bihar and another, (2000) 4 SCC 168.

(f) Rashmi Jain v. State of Uttar Pradesh and another, (2014) 13 SCC 553.

(g) Paramjeet Batra v. State of Uttarakhand and others, (2013) 11 SCC 673.

(h) Mohammed Ibrahim and others v. State of Bihar and another, (2009) 8 SCC 751.

(i) Sarabjit Singh v. State of Punjab and others, (2013) 6 SCC 800.

(j) Indian Oil Corpn. v. NEPC India Ltd. and others, (2006) 6 SCC 736.

(k) Amarjit Kaur v. Harbhajan Singh and another, (2003) 10 SCC 228.

(l) Vijaya Rao v. State of Rajasthan and another, (2005) 7 SCC 69.

(m) Orissa State Financial Corporation v. Narsingh Ch. Nayak and others, (2003) 10 SCC 261.

(n) Ram Biraji Devi and another v. Umesh Kumar Singh and another, (2006) 6 SCC 669.

5. Ms. Trusha Patel, learned advocate appearing for respondent No.2-complainant, submitted that the petitioners had approached the respondent-

complainant and his relatives with the proposal to purchase 16 parcels of lands situated at Village : Bavra, Taluka : Mahemdavad, District : Kheda and

that if the respondent-complainant and his relatives are willing to purchase the said lands, the petitioners would make necessary arrangements for the

same. It was submitted that as the respondent-complainant and his relatives were not knowing the original land owners and were knowing the

petitioners, it was decided that the petitioners would buy the said lands, get the titles cleared and would, thereafter, sell the lands to the respondent-

complainant and his relatives. However, it was agreed upon between the parties that the respondent-complainant and his relatives would have to pay

some amounts at the time of execution of sale deeds in favour of the petitioners and accordingly, in March 2007, the sale deeds came to be executed

in favour of the petitioners. It was pointed out that at the time of execution of sale deed, huge amount of consideration was paid from the accounts of

the respondent-complainant by way of cheques. At that time, only the petitioner No.1 had paid consideration from his account whereas, petitioner

Nos.2 and 3 had not paid any amount from their accounts. It was submitted that it was in the aforesaid background that the petitioners had executed

the power of attorney in favour of the son of the respondent-complainant and hence, the case of the petitioners that the power of attorney is forged

and fabricated is without any basis.

5.1 It was further submitted that out of the 16 parcels of lands, 5 parcels of lands were purchased in the joint names of the petitioners and one

Jayantilal Shaishamji Jain. Thereafter, as agreed between the parties, the share of Jayantilal Shaishamji Jain, comprising of lands bearing Survey

Nos.99P, 127P, 127P, 224P and 356P, was sold to the family members of petitioner No.1 in the year 2008 by the son of the respondent-complainant in

the capacity of being their power of attorney holder. Thus, in the year 2008 itself, the petitioners had accepted the transactions made by the son of the

respondent-complainant in the capacity of power of attorney holder.

5.2 It was further submitted that on 13.05.2016, out of the 16 parcels of lands, the petitioners executed sale deeds in respect of 5 parcels of lands ad-

measuring 80.56 Bighas in favour of the respondent-complainant and his relatives. Subsequently, in the month of May 2016 itself, the respondent-

complainant and his relatives paid the entire amount of consideration, including the consideration for the remaining lands in dispute, i.e. land ad-

measuring 71 Bighas. It was pointed out that the petitioners had initially, executed 5 registered sale deeds; however, at the time of execution of sale

deeds in respect of the remaining 11 parcels of lands, they backed out. The petitioners placed a condition that the respondent-complainant, as an

authorized signatory of one M/s. Ratnadeep Infrastructure Pvt. Ltd., shall first execute the sale deed qua the industrial land bearing Survey Nos.833

and 834 of Taluka : Kadi along with the factory standing over it in favour of the Company owned by petitioner No.1, which was agreed upon by the

respondent-complainant and a registered sale deed in respect of the said property came to be executed on 16.05.2016. Thereafter, 11 sale deeds,

which were to be executed by the petitioners in favour of the respondent-complainant and his relatives were executed on 18.07.2016. Out of the

aforesaid 11 sale deeds, the Sub-Registrar accepted the Registration Fees in respect of 8 sale deeds and qua 2 of the sale deeds, the authority refused

to accept the fees as the lands were running in the names of the earlier owners and qua the remaining 1, there appeared to be some dispute as regards

the title of the land.

5.3 Learned advocate Ms. Patel submitted that the respondent-complainant requested the Sub-Registrar to accept the documents and register them;

however, the said authority refused to register the same on the ground that Kamlesh Gangaram Mali, who is the son of the respondent-complainant,

had signed the documents on behalf of two of the petitioners. The respondent-complainant, therefore, requested the petitioners to appear before the

authority for getting the sale deeds qua the subject lands rejected. However, by taking undue advantage of the situation, the petitioners demanded

higher amount, in addition to the consideration that was already paid by the respondent-complainant and when the respondent-complainant refused to

make such payment, the petitioners got a public notice published in the local news-paper. It was, accordingly, urged that the petitioners pocketed the

entire amount of sale consideration and thereafter, did not co-operate in the registration of the sale deeds. Hence, it was prayed to rejected the petition.

6. Having heard the learned advocates on both the sides as also the learned APP, it appears that the parties were having business relations spreading

over three decades. They jointly purchased / sold several parcels of lands at different places over all these years. They also undertook the work of

constructing residential housing schemes on different parcels of lands. As per the documents made available on record, the first such residential

project was undertaken by them way back in the year 1986.

7. Coming to the case on hand, the main allegation against the petitioners is that they have not executed the sale deeds in respect of the subject lands

in favour of the respondent-complainant, after having pocketed the amout of sale consideration and have, thereby, sought to invoke the provision of

section 420 IPC against the petitioners. It is well settled that for the purpose of establishing the offence under Section 420 IPC, the complainant is

required to show that the accused had fraudulent or dishonest intention at the time of making the promise or representation. For the purpose of

ascertaining the same, the substance of the complaint has to be seen and mere use of the expression Ã¢â‚¬Ëœcheatingâ€™Ã¢â‚¬â„¢ in the complaint is of no

consequence. It should appear from the complaint itself that right from the beginning or inception of the promise or representation, the petitioners

carried a fraudulent or dishonest intention to cheat the respondent-complainant. In other words, it cannot be presumed that the petitioners carried

culpable intention right from the beginning, i.e. at the time when the promise was made, only on the ground of their failure to keep promise at a

subsequent stage.

8. Let us now examine whether the ingredients of an offence of Ã¢â‚¬ËœcheatingÃ¢â‚¬â„¢ are made out or not. The essential ingredients of the offence of

Ã¢â‚¬ËœcheatingÃ¢â‚¬â„¢ are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to

intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

9. To constitute an offence under Section 420 IPC, there should not only be cheating but as a consequence of such cheating, the accused should have

dishonestly induced the person deceived. In the impugned complaint, the main allegation against the petitioners is that they did not appear before the

Office of the Sub-Registrar for getting the sale deed registered in favour of the respondent-complainant and his relatives, after having received the

amount of sale consideration. However, the complaint does not disclose that the petitioners carried such dishonest intention right from the time when they had allegedly made such promise to the respondent-complainant. The reason given by the petitioners for such absenteeism is that the son of the

respondent-complainant, named Kamlesh Gangaram Mali, had allegedly created a false and fabricated power of attorney and had managed to sell land

in favour of one of the relatives of the respondent-complainant, named Ashokbhai Babulal Mali, which prompted the petitioners to file two different

civil suits against said Kamlesh Gangaram Mali and his relative Ã¢â‚¬" Ashokbhai Mangilal Mali and it appears that in the suit proceedings of one of the

suits being Civil Suit No.1546 of 2016 interim injunction has also been granted in favour of the petitioners. The respondent-complainant also appears to

have instituted suit being Civil Suit No.56 of 2016 before the competent civil Court at Mehamdabad for specific performance. All the above suits are

reported to be pending.

10. At this stage, it would be beneficial to refer to a decision o the Apex Court in the case of International Advanced Research Centre for Powder

Metallurgy and New Materials (ARCI) and others v. Nimra Cerglass Technics (P) Ltd. And another, 2016 (1) SCC (Cri.) 269, more particularly, on

the following observations:

Ã¢â‚¬Å“12. 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 uncontroverted allegations as made in the complaint establish the offence. The High Court being superior court of the State should refrain

from analyzing the materials which are yet to be adduced and seen in their true perspective. The inherent jurisdiction of the High Court under Section

482 Cr.P.C. should not be exercised to stifle a legitimate prosecution. Power under Section 482 Cr.P.C. is to be used sparingly only in rare cases. In a

catena of cases, this Court reiterated that the powers of quashing criminal proceedings should be exercised very sparingly and quashing a complaint in

criminal proceedings would depend upon facts and circumstances of each case. Vide State of Haryana & Ors. vs. Bhajan Lal & Ors., 1992 Supp.(1)

SCC 335; State of T.N. vs. Thirukkural Perumal, (1995) 2 SCC 449; and Central Bureau of Investigation vs. Ravi Shankar Srivastava, IAS & Anr.

(2006) 7 SCC 188.

13. In the light of the well-settled principles, it is to be seen whether the allegations in the complaint filed against ARCI and its officers for the alleged

failure to develop extruded ceramic honeycomb as per specifications disclose offences punishable under Sections 419 and 420 IPC. It is to be seen

that whether the averments in the complaint make out a case to constitute an offence of cheating. The essential ingredients to attract Section 420 IPC

are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed

or is capable of being converted into a valuable security and (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating under Section 420 IPC. In order to bring a case for the offence

of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation

was false to the knowledge of the accused and was made in order to deceive the complainant.

14. Distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement.

If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the

complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if

all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and

the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal

prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. In S.W. Palanitkar & Ors. vs. State of

Bihar & Anr. (2002) 1 SCC 241, this Court held as under:

Ã¢â‚¬Å“21 Ã¢â‚¬Â¦Ã¢â‚¬Â¦In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made.

It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of

cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.Ã¢â‚¬â€‹

The above view in PalanitkarÃ¢â‚¬â„¢s case was referred to and followed in Rashmi Jain vs. State of Uttar Pradesh & Anr. (2014) 13 SCC 553.Ã¢â‚¬â€‹

11. As discussed herein above, both the sides have instituted civil suits before different civil Courts and they are reported to be pending. Therefore, the

dispute between the parties, essentially, appears to be of civil in nature.

12. In a series of decisions, the Apex Court has explained the contours of the power under Section 482 Cr.P.C. In State of Haryana V. Bhajan Lal

and others, AIR 1992 SC 604, in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure and of the principles

of law relating to the exercise of extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C., the Apex Court gave the

following categories of cases, by way of illustrations, wherein such power could be exercised, either to prevent abuse of the process of the Court or

otherwise to secure the ends of justice, making it clear that it may not be possible to lay down any precise, clearly-defined and sufficiently channelised

and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases, wherein such power should be exercised:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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 conclusion that there is sufficient ground for proceeding against the accused;

(f) 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;

(g) 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.Ã¢â‚¬â€‹

13. Judged on the touchstone of the principles noted above, the present case, in my opinion, warrants interference inasmuch as the ingredients of the

offence of cheating punishable under Section 420 IPC and its allied offences under Section 427 IPC has not been made out. The requirement that the

petitioners carried a dishonest intention to cheat the respondent-complainant and his relatives right from the time when the promise was made, is not

made out from the complaint and thus, the core postulate of dishonest intention in order to deceive the respondent-complainant is not in existence even

on acceptance of all the averments made in the complaint on their face value. Hence, the impugned complaint deserves to be quashed and set aside.

14. For the foregoing reasons, the petition is allowed. The impugned complaint being C.R. No. I Ã¢â‚¬" 154 of 2016 dated 19. 12.2016 registered with

Kheda Town Police Station, Kheda and all consequential proceedings initiated in pursuance thereof in the form of Criminal Case No.277 of 2019

pending before the Court of learned J.M.F.C., Mahemdabad are quashed and set aside. Rule is made absolute. Consequently, the civil application

stands disposed of.

(GITA GOPI, J)

FURTHER ORDER

After the judgment was pronounced, learned advocate Ms. Patel appearing for the respondent No.2-complainant requested for staying the operation

of the judgment for a period of four weeks for approaching the higher forum; however, the same was objected to by learned Senior Advocate Mr.

Naik appearing for the petitioners. Considering the facts and circumstances of the case, the request is granted and the judgment shall remain stayed

for a period of four weeks from today.