

(2024) 04 TEL CK 0007

High Court For The State Of Telangana:: At Hyderabad

Case No: Criminal Petition Nos. 4322, 7574 & 8123 Of 2019

Dr. Laxmi Bhaskar

APPELLANT

Vs

State Of Telangana And Another

RESPONDENT

Date of Decision: April 2, 2024

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 341, 354(a), 354(b), 354(d), 406, 420, 447, 467, 468, 472, 478, 488, 506, 509
- Code Of Criminal Procedure, 1973 - Section 156(3), 200, 202, 482
- Information Technology Act, 2008 - Section 67

Hon'ble Judges: Dr. G.Radha Rani, J

Bench: Single Bench

Final Decision: Allowed

Judgement

1. These Petitions are filed by the petitioners-accused Nos.1 to 3 under Section 482 of Cr.P.C. to quash the proceedings in C.C.No.326 of 2018 on the file of the XIV Additional Chief Metropolitan Magistrate, Hyderabad at Nampally, in taking cognizance for the offences under Sections 420, 406, 488, 478, 467, 472 read with Section 34 of IPC.

2. The respondent No.2 lodged a private complaint stating that he was an ENT Specialist and completed his Post Graduation from All India Institute of Medical Sciences at New Delhi and worked for some time at Delhi and shifted to Hyderabad and started a clinic and hospital at Panjagutta, Hyderabad in the name and style of "Asian ENT Care Center". He gained good reputation in his profession. He was also a visiting doctor at NIMS Hospital, Panjagutta, Hyderabad. He got acquainted with A2, who was a doctor at NIMS Hospital, Panjagutta, Hyderabad. A2 and A3 visited his clinic at Panjagutta and tried to convince him to purchase a land at Maheswaram Mandal stating that the said land belonged to their known persons and convinced the complainant to invest money. The complainant refused to purchase the same

stating that he was not having sufficient amount to pay. But, A2 and A3 continuously persuaded and pressurized him to purchase the land for a period of three months. Finally, they suggested that they were going to register the property through A4 and A5, who were the land owners and asked him to pay the consideration amount after registration and that they would pay the registration amount of the document and hand over the registered document. Believing them, the complainant finally agreed to do so. A2 and A3 handed over the registered document bearing No. 1040 of 2011 dated 16-04-2011 for an extent of Ac.2-00 in survey No. 650 executed by A4 and A5. Another document was also got executed by A1 in favour of the complainant and his mother vide Doc.No.2527/2011 dated 20-07-2011. The complainant expressed his willingness to visit the Sub-Registrar Office at the time of registration of the documents. A1 to A3 suggested that as he was a busy doctor, he did not have to attend the Sub-Registrar Office and that they would take substitute steps for getting registration.

2.1. The complainant further submitted that A1 to A3 had shown the agricultural land to him and after handing over the original documents started demanding the complainant to pay the amount. The complainant paid a total amount of Rs.41,00,000/- including expenditure of registration. Out of Rs.41,00,000/-, the complainant paid some amounts through account payee cheques in the name of the accused No. 1, some of the amounts paid through self cheques, some of the amounts by way of cash to A1 to A3. For the payment made through cash, the complainant had not taken any receipt as the amounts received by the accused was reflected in the sale deeds. Altogether A1 to A3 received Rs 41,00,000/- from the complainant.

2.2. He further submitted that as per the condition before execution of the sale deed A1 to A3 had to conduct the survey with their money and fix the boundaries. Accordingly, the complainant was pursuing A1 to A3 to get the survey done and to fix the boundaries for the land shown to him, but A1 to A3 dragged the matter and finally stated that they would get the survey done, fix the boundaries and hand over the land in the first week of August, 2014. The complainant kept quiet till August, 2014. Thereafter the complainant once again asked A1 to A3 to get the survey done, fix the boundaries and hand over the possession of the land. As they were postponing the matter, he decided to check the particulars of the land before the M.R.O, Maheswaram Mandal. The complainant and his well wishers, Bose Babu and one Ramulu visited Tahsil office along with Harinath Chowdhury. To their shock, the complainant came to know that the land shown to him belonged to some third parties and the documents furnished by A1 to A3 pertaining to the land were forged and created. A1 to A3 prepared the rubber stamps of Tahsil office and forged the signatures of the Mandal office employees and got prepared stating that the land belonged to A1, A4 and A5. The patta pass books and pahani patrikas were prepared by A1 to A3 in the name of A4 and A5. A4 and A5 were innocent tribals of Mahbubnagar District. Only to make the complainant believe, the accused used

their names, convinced the complainant that the land belonged to A4 and A5. In fact, the said land in Survey No. 650 belonged to one Ashok Tibriwala, Bhavani Venkat Reddy and others. The complainant and his well-wisher Ramulu applied for particulars before the Tahsildar, for the particulars of the land shown as per the pattadar pass books. The Tahsildar issued a letter dated 08.02.2014 stating that they did not belong to A4 and A5 and gave a reply that the pattadar pass books and pahani records were forged and fabricated and that the office of Tahsildar never issued such documents in favour of A4 and A5 and furnished the particulars of the owners of the land in Sy.No.650. As such, the complainant came to know that the accused persons conspired together with an intention to cheat him, forged the documents and revenue records by way of preparing rubber stamp and official material and convinced the complainant that the land belonged to A4 and A5 and got registered the said land in the name of the complainant. At the time of registration, the accused persons furnished false identity records and with the said forged identity records, the accused had misguided the Sub-Registrar. The complainant approached A1 to A3 and questioned about furnishing forged documents and fake revenue records whereby, A1 to A3 confessed and admitted their illegal acts and requested the complainant not to lodge a complaint and that they would repay the entire amount with bank interest. The complainant agreed to receive the amount. A1 executed a document dated 24.09.2014 admitting to repay the amount within one month. As a security, she handed over the original sale deed of the flat owned by her father Mr. K.J. Philips. A1 stated that A2 and A3 also received the amount, out of Rs.41,00,000/-, collected from him. When he insisted A1 to A3 to pay the amount on 07.04.2014, they refused to transfer the property in his name and also threatened him with dire consequences.

2.3. The said complainant was referred to the police by the learned XIV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad for investigation under Section 156(3) of Cr.P.C.. The same was registered as Crime No.546 of 2015 under Sections 420, 406, 488, 478, 467, 472 read with 34 of IPC. The police after investigation filed a final report to treat the same as civil in nature. Aggrieved by the same, the respondent No.2-complainant filed a protest petition. The learned Additional Chief Metropolitan Magistrate, Nampally, Hyderabad had taken cognizance of the case for the offences under Sections 420, 406, 488, 478, 467, 472 read with 34 of IPC. Aggrieved by the said cognizance order, the petitioners-accused filed these petitions to quash the proceedings in C.C.No.326 of 2018.

3. Heard Sri N. Avaneesh, the learned counsel for the petitioner-A1, Sri Srinivasa Rao Madiraju, the learned counsel for the petitioner-A2, Sri Mummaneni Srinivasa Rao, the learned counsel for the petitioner-A3 and Sri Kullapareddy Suresh Babu, the learned counsel for respondent No.2.

4. The learned counsel for the petitioner-A1 submitted that the petitioner-A1 had not committed any offences as alleged by respondent No.2. Even as per the final

report filed by the police, the matter was civil in nature. The learned Magistrate ought not to have allowed the protest petition, filed by the respondent No.2. The respondent No.2 instead of approaching the civil court for appropriate relief had filed the present complaint only with a malafide intention to apply pressure on the petitioner with an ulterior motive to extort huge sums of money. The investigation conducted by the police also would reveal that A4 and A5 were vendors of the land situated in Sy.No.650, Maheshwaram Mandal, Ranga Reddy District and after examining the relevant documents pertaining to the land, such as patta and pahani, MRO issued the proceedings dated 24.10.2006. The documents relied by the respondent No.2 did not contain or reveal any information pertaining to the land in Sy.No.650.

4.1. He further submitted that infact the respondent No.2 was harassing the petitioner to marry him for the past several many months prior to filing of the complaint and when the petitioner refused the said demand, the respondent No.2 falsely implicated the petitioner in the above crime only to spite her due to vengeance. The respondent No.2 used to send obscene images to the petitioner and also tried to outrage the modesty of the petitioner by sexually harassing her. In that regard, the petitioner also lodged a complaint against respondent No.2, which was registered as Crime No.49 of 2016 for the offences punishable under Section 67 of I.T. Act, 2008 and Sections 506, 509, 354(a)(b)(d) of IPC and after investigation, the police also filed charge sheet and the same was numbered as C.C.No.366 of 2017 on the file of XII Additional Chief Metropolitan Magistrate, Nampally, at Hyderabad. The respondent No.2 was a chronic litigant. There was also another case vide C.C.No.98 of 2018 registered against him on the file of XII Additional Chief Metropolitan Magistrate, Nampally for the offences punishable under Sections 420, 468, 471, 341, 447 of IPC. The allegations leveled against the petitioner were purely civil in nature, as such, the police filed a final report. Any further continuation of the proceedings in C.C.No.326/2018 would be an abuse of process of court and prayed to dismiss the crime against the petitioner-A1.

5. The learned counsel for the petitioner-A2 contended that the petitioner was no way concerned with the allegations leveled against him. The subject property was purchased by the grandfather of the petitioner, by name, Sri. K.V Hanumantha Rao through registered sale deed vide Doc.No. 1042 of 2011, dated 30-03-2011 along with Mrs. Philips Buleah (who was arrayed as A1), Mr. Harinath Babu (who was arrayed as A3) and Respondent No.2 from their vendors, who were arrayed as A4 and A5 in the above case. Subsequently, respondent No.2 had shown interest to purchase a portion of land that belonged to A1 and they requested the petitioner to act as a witness to the registration process and accordingly the petitioner only acted as a witness to the registered sale deed Doc. No.2527/2011 dated 20-07-2011 on the file of SRO, Maheshwaram. The respondent No.2 had falsely implicated the petitioner only to wreck vengeance in view of their personal disputes. Even if any discrepancies were observed in the revenue records by the de-facto complainant,

the same would not constitute any offence against the petitioner as he was no way concerned with the same. The Petitioner was not aware of any litigations pending over the said land. The respondent No.2 upon learning about the same started blaming the petitioner for showing the lands which were in litigation. Infact, the petitioner's grandfather, who purchased the said land should be treated as an affected party if any discrepancies were observed with respect to the aforesaid agricultural lands as he would also be deemed to be deceived by the vendors. The petitioner neither forced nor induced the respondent No.2 to purchase the agricultural lands. He was falsely implicated in the above case and prayed to dismiss the petition against the petitioner-A2.

6. The learned counsel for the petitioner-A3 contended that the police after conducting a free and fair investigation, declared the matter as civil in nature. Even as per the protest petition, no ingredients of the offences under IPC were attracted. The petitioner's name was included without any allegation made against him. Hence, the proceedings against the petitioner were liable to be quashed and prayed to allow the petition by quashing the proceedings against the petitioner-A3.

7. The learned counsel for respondent No.2 on the other hand contended that there were serious allegations against all the accused persons A1 to A3, as they were the persons who had shown the land to respondent No.2 at Maheshwaram Mandal which did not belong to them or A4 and A5. Believing the version of the petitioners-A1 to A3, the respondent No.2 paid huge amounts to them. Subsequently, it was learnt that no such land was available in Maheshwaram Mandal. The subsequent enquiries made by respondent No.2 revealed that all the revenue records which were given by A1 to A3 were false, fabricated and forged documents. Even A1 to A3 prepared the rubber stamps of Tahsildar, Maheshwaram and forged the signature of Tahsildar and made him to believe that the agricultural land belonged to A4 and A5. The petitioners-A1 to A3 picked up A4 and A5 from the village, manipulated the Sub-Registrar and got registered the property, which was not available on the ground. The schedule of the property shown in the sale deed was non-existing. The pattadar passbooks were not issued by the Tahsildar, but were created by A1 to A3. The police filed final report without conducting investigation. The petitioners received an amount of Rs.41 Lakhs and created the documents to extract money. On demand by respondent No.2, they abused and threatened him with dire consequences. Infact, they also admitted their guilt and agreed to repay the amount, but failed to repay the same. As such, there was a *prima facie* case made out against the petitioners and considering the same, the learned XIV Additional Chief Metropolitan Magistrate had taken cognizance of it, as such, the same could not be quashed and prayed to dismiss the petitions.

8. On considering the rival submissions of the learned counsel for the petitioners and the learned counsel for respondent No.2 on record, the point for consideration now is:

Whether the allegations made in the protest petition together with the statements of the complainant and witnesses examined before the Magistrate taken on their face value would make out the offences for which the Magistrate had taken cognizance of?

9. It is settled law that the power under Section 482 of Cr.P.C. has to be exercised sparingly and in the interest of justice. But allowing the criminal proceedings to continue even where the allegations in the complaint did not make out any offence, would tantamount to an abuse of process of the Court. In such case, the power under Section 482 of Cr.P.C. can be exercised.

10. The Hon'ble Apex Court in Indian Oil Corporation Vs. NEPC India Limited (2006) 6 SCC 736 on considering the earlier precedents relating to exercise of jurisdiction under Section 482 of Cr.P.C. stated the principles as follows:

"12.(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the

criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri vs. State of UP* [2000 (2) SCC 636], this Court observed :

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

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

11. As seen from the facts of the case, the complainant purchased Ac.2-00 gts of land in Sy.No.650 of Mankhal Village, Maheshwaram Mandal, Ranga Reddy District from A4 and A5 vide registered sale deed document bearing No.1040 of 2011 dated 16.04.2011 and on the same day, A1 also purchased Ac.3-00 gts of land in the same survey number from A4 and A5 and the grandfather of A2, by name, Sri V.K. Hanumantha Rao also purchased some extent of land in the same survey number from A4 and A5. Subsequently, on 20.07.2011, A1 sold Ac.1-20 gts. of land out of the said Sy.No.650 to the complainant and his mother and executed a registered sale deed document No.2527 of 2011 dated 20.07.2011. As per the complainant, he had not even attended the Registrar office and paid an amount of Rs.41,00,000/- only after registration. The registration expenditure was also borne by A1 to A3. He stated that he paid some amount through account payee cheques in the name of A1, some amount by way of cash to A1 to A3 but had not taken any receipt for the cash payments. No proof was filed by the complainant in proof of payment of amounts to A1 to A3. His further contention was that A1 to A3 have to conduct the

survey with their money and fix boundaries before execution of the sale deed but had not stated as to where such condition was stipulated. There was no agreement of sale between the parties or he could not show any such condition in the sale deed. His further contention was that he along with his well-wishers, Bose Babu and one Ramulu visited the Tahsil office along with one Harinath Chowdhary and decided to check the particulars of the land before the M.R.O., Maheshwaram Mandal and stated that to his shock, he came to know that the land shown to him belonged to some third parties and the documents furnished by A1 to A3 pertaining to the land were forged and created. But the complainant failed to examine any of these persons, Bose Babu, Ramulu or Harinath Chowdhary as witnesses before the XIV Additional Chief Metropolitan Magistrate prior to taking cognizance. He got examined one Amarnath Reddy as PW.3. PW.3 stated before the Court as if he was present at the time of persuasion by A1 to A3 to the complainant to purchase the said land. He stated that at first instance the complainant was not interested to purchase the lands but on rigorous following by A1 to A3, the complainant accepted to purchase the land. He further stated that subsequently, the complainant informed him that he paid a sum of Rs.41,00,000/- to A1 and A2 and he intended to get registration. This evidence is a hearsay. He further stated that one or two months later, the complainant again informed him that the lands were registered, which was also a hearsay. His further evidence also would not disclose his witnessing any of the transactions between the complainant and the accused persons. He stated that the complainant enquired into the matter through known persons and came to know that there was no availability of such land purchased by him and his mother. Thus PW.3 had not even stated the names of the persons through whom the complainant enquired into the matter. PW.3 further stated that on one occasion, at the request of the complainant, he attended the meeting between the complainant and A1 to A3 and A1 to A3 admitted non-availability of the land and informed that they would compensate and subsequently, they did not compensate nor returned the consideration amount or provided any other property.

Thus, the evidence of PW.3 is no way helpful to the case of the complainant.

12. The complainant contended that the documents furnished by A1 to A3 pertaining to the land were forged and created. His contention was that A1 to A3 prepared the rubber stamps of Mandal office and forged the signatures of the Mandal office employees and stated to him that the land belonged to A1, A4 and A5. But he had not examined any of the witnesses from the Tahsil office or the Mandal office to prima-facie prove his allegations that the documents pertaining to the land, handed over by A1 to A3 were forged or created. He further stated that the patta passbooks and pahani pathrikas were prepared by A1 and A3 in the names of A4 and A5. His contention was that the said land in Sy.No.650 belonged to one Ashok Tibriwala, Bhavani Venkat Reddy and others. As per his contention, he came to know about the same when his well-wisher Ramulu, made an application to the Tahsildar under Right to Information Act for the particulars of the land shown in the pattedar

passbooks of A4 and A5 and the Tahsildar issued a letter dated 08.12.2014 stating that they did not belong to A4 and A5 and gave a reply that the pattedar passbooks and pahani records were forged and fabricated and that the office of Tahsildar never issued such documents in favour of A4 and A5 and furnished the particulars of the owners of the land in Sy.No.650.

13. The final report filed by the SI of police, Panjagutta would show that as per the proceedings of the MRO, Maheshwaram and passbooks, A4 and A5 were the land owners and there was no need of manipulation of records by A4 and A5. The police in the final report stated that as per the pahani, adangal submitted by the complainant which was obtained by Ramulu, the well-wisher of the complainant from the Tahsildar, Maheshwaram mandal, there was no mention of Sy.No.650 and it was pertaining to Sy.Nos.650/UU to 651/E, contrary to the contents of the complaint.

14. A copy of the adangal pahani filed by the complainant would disclose the name of A4 as pattedar and possessor for Sy.No.650/A to an extent of Ac.2-00 gts. and the name of A5 was shown as pattedar and possessor in Sy.No.650/E. Thus, even as per the final report filed by the police, A4 and A5 were the land owners and there was no need of manipulation of records to them. The names of Ashwin Kumar Tibriwala, Bhavani Ranga Reddy were shown as pattedars and possessors for other by-numbers against Sy.Nos.650/UU and 650/RU. Thus, Sy.No.650 was divided into several by numbers and the names of A4 and A5 were also found for Sy.No.650/A and 650/E.

15. The copies of the pattedar passbooks and title deeds of A4 and A5 were also filed. The complainant ought to have examined the Tahsildar to prove his contention that the said passbooks and title deeds were not issued by the Tahsildar. The complainant was only relying upon a RTI information applied by one Ramulu to show that the above documents were forged documents. As seen from the RTI information sought by Ramulu, they sought for information pertaining to the copy of proceedings No.D/2858/2006 dated 28.10.2006 issued by the MRO, Maheshwaram Mandal, Ranga Reddy District to Smt. E. Dasli, W/o. Gothey and the Tahsildar gave a reply stating that on verification of the inward register of the year 2006, the file bearing No.D/2858/2006 has made an entry against A.Raju, R/o. Maheshwaram ROR-succession-Thummaloor village, Sy.No.3801, extent of Ac.2-00 gts. However, it was further mentioned that even after intensive search, the above file was not available.

16. The sale deed copy registered by Smt. Islavath Dasli and Mr. Meghavath Gopal @ Gopya in favor of the petitioner dated 30.03.2011 would disclose that the vendor No.1, Smt. Islavath Dasli was the owner and possessor of Sy.No.650 admeasuring Ac.4-00 gts. situated at Mankhal Village and Gram Panchayat, Maheshwaram mandal, Ranga Reddy District and the same was mutated in pattedar vide patta No.1456, pass book No.Z-487441, title deed No.Z-487441 and ROR proceedings

No.B/2858/2006 dated 24.10.2006 issued by the MRO, Maheshwaram mandal, Ranga Reddy District and the vendor No.2 i.e., Meghavath Gopal @ Gopya was the owner and possessor of the agricultural land bearing Sy.No.650 admeasuring Ac.4-00 gts., situated at Mankhal village and gram panchayat, Maheshwaram mandal, Ranga Reddy district and the same was mutated in the revenue records under pattedar vide patta No.1352, pass book No.Z-516235 and title deed No.Z-516235, issued by MRO, Maheshwaram mandal, Ranga Reddy district.

17. Thus the information sought by the said Ramulu was pertaining to proceedings bearing No.D/2858/2006, but not for B/2858/2006 pertaining to A4 and A5. As such, the Tahsildar, Maheshwaram mandal might have given information that the said entry was made against the person by name A. Raju, R/o. Thummaloor village, Maheshwaram Mandal for an extent of Ac.2-00 gts. and it was pertaining to Sy.No.3801, which was not corresponding to A4 and A5. Applying for an information mentioning a wrong proceeding number and without examining the Tahsildar, Maheshwaram mandal to prove the genuinity or otherwise of the pattedar passbooks of A4 and A5 and the proceedings of MRO, contending that they were forged documents and further contending that the land was not available on ground and insisting A1 to A3 to provide alternative land or for return of the amount by registering a false case against them, summoning them to police station to settle the matter and keeping the documents pertaining to the flat of the father of A1 in his possession as a security is nothing but blackmailing the petitioners.

18. The trial court issued summons to the present petitioners A1 to A3 basing on the statement of the complainant and another witness examined as CW-3. When the complainant was contending that the revenue records were forged and rubber stamps and seals of official witnesses were prepared by the petitioners, it was the duty of the Court to ascertain the said facts prior to taking cognizance of the said offences. The trial court ought to have insisted the examination of the Tahsildar or the concerned officials whose signatures or stamps and seals were alleged to be forged without acting on the oral statement of the complainant alone. The complainant made several allegations like the petitioners filed false identity cards and challans before the Sub-Registrar. Without examining the Sub-Registrar, the court ought not to have believed the same.

19. The learned counsel for the petitioners relied upon the judgment of the Hon'ble Apex Court in Govind Prasad Kejriwal Vs. State of Bihar and Ors. AIR 2020 SC 1079 wherein while referring to its earlier judgment in National Bank of Oman Vs. Barakara Abdul Aziz (2013) 2 SCC 488 it was held that:

"It cannot be disputed that while holding the inquiry under Section 202 Cr.P.C. the Magistrate is required to take a broad view and a prima facie case. However, even while conducting/holding an inquiry under Section 202 Cr.P.C., the Magistrate is required to consider whether even a prima facie case is made out or not and whether the criminal proceedings initiated are an abuse of process of law or the

Court or not and/or whether the dispute is purely of a civil nature or not and/or whether the civil dispute is tried to be given a colour of criminal dispute or not."

20. The impugned order would disclose that the learned XIV Additional Chief Metropolitan Magistrate had taken cognizance against A1 to A5 for the offences under Sections 420, 406, 488, 478, 467, 472 read with 34 of IPC. The offence under Section 478 is pertaining to property mark, which was repealed. The offence under Section 488 is pertaining to punishment for making use of any such false mark. The offence under Section 467 of IPC is pertaining to forgery of valuable security, will, etc.. It is the duty of the complainant to explain and prove what was the document which can be treated as a valuable security which was alleged to be forged by the petitioners herein prior to taking cognizance. The offence under Section 472 of IPC is pertaining to making or possessing counterfeit seal, etc. with an intent to commit forgery.

21. To attract the ingredients of the offence under Section 420 of IPC, the following requirements need to be proved.

- i. That the representation made by the person was false.
- ii. The accused had prior knowledge that the representation he made was false.
- iii. The accused made false representation with a dishonest intention in order to deceive the person to whom it was made.

22. But, the facts of the case would reveal that A1 had purchased Ac.3-00 gts. of land in the same survey number from A4 and A5 and the grandfather of A2 had also purchased some extent of land from A4 and A5. If A4 and A5 were not having any land existing in the said survey number, these persons also would be victims, but cannot be made as an accused. As such, the offence under Section 420 of IPC *prima facie* appears to be not applicable to the petitioners.

23. To attract the offence under Section 406 of IPC there should be entrustment of the property and the petitioners must have dishonestly misused the said property in violation of the said trust imposed upon them or converted the property for their own use. There were no such allegations or *prima-facie* proof of the same that the petitioners have misused or misappropriated the amounts. As such, the above ingredients of Section 406 of IPC are also not applicable to the facts of the case.

24. Thus, the learned judge without even looking into the said provisions whether they were existing or repealed had taken cognizance of the said offences against the petitioners which were not at all applicable as per the facts of the case. Without examining the Tahsildar who issued the pattedar passbooks, title deeds or the proceedings, considering them as forged documents and the stamps and seals on them as forged and taking cognizance against the persons holding respectable positions, basing only upon the oral statement of the complainant even after the police filing the final report stating that as per their investigation, A4 and A5 were

land owners and there was no need for them to manipulate the records is considered as abuse of process of law. As such, the impugned order of taking cognizance by the learned XIV Additional Chief Metropolitan Magistrate is liable to be quashed.

25. In the result, the Criminal Petitions are allowed, quashing the proceedings in C.C.No.326 of 2018 on the file of the XIV Additional Chief Metropolitan Magistrate, Hyderabad.

Miscellaneous applications, pending if any, shall stand closed.