



1

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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

MISC. CRIMINAL CASE No. 6169 of 2011

SMT. DR. SUSHILA

Versus

THE STATE OF MADHYA PRADESH AND ANR.

Appearance:

*Shri C. L. Yadav – Senior Advocate with Shri O.P. Solanki –
Advocate for the petitioner.*

Shri Hemant Sharma – G.A. for respondent No.1/State.

Shri Amar Singh Rathore – Advocate for the respondent No.2.

WITH

MISC. CRIMINAL CASE No. 4046 of 2011

BHANUKUMAR JOSHI AND ANR.

Versus

SMT. MEENA AND ANR.

Appearance:

Shri Ashish Gupta- Advocate for the petitioners.

Shri A.S. Rathore – Advocate for the respondent No.1.

Shri Hemant Sharma – G.A. for respondent No.2/State.

ORDER

Reserved on : 28.01.2026

Pronounced on : 16.04.2026

.....

These petitions having been heard and reserved for orders, coming on



for pronouncement this day, the Court passed the following:

ORDER

1] Heard.

2] This order shall also govern the disposal of M.Cr.C. No.4046 of 2011 as both the cases have arisen out of the common order dated 16.03.2011, passed in their respective Criminal Revision Nos.862 of 2010 and 844 of 2010, whereby the order dated 17.09.2010, of framing of charges, under Sections 420, 406, 120B of IPC passed by the Judicial Magistrate First Class in Criminal Case No.35371 of 2008 has been affirmed.

3] Brief facts of the case are that a private complaint u/s. 200 of Cr.P.C. was filed by the respondent No.2, Smt. Meena, wife of Rajendra Prasad Agrawal (in M.Cr.C. No.6169 of 2011), against the petitioners in M.Cr.C. No.4046 of 2011, Bhanu Kumar and Kumari Jyoti, as also petitioner Dr. Sushila Bai in the present M.Cr.C. No.6169 of 2011. The complaint was filed by the complainant Meena alleging criminal breach of trust by the accused persons as it was alleged that on 04.01.2007, an agreement was entered into between the complainant Meena on one side and Jyoti Joshi who is the sister of Bhanu Kumar Joshi on the other side for a total sum of Rs.9.21 lakhs for the sale of a flat and adjoining 338 square foot open land, and it is alleged that despite taking a sum of Rs.4,76,000/-, and giving possession of the flat and the land to the complainant, the accused persons Bhanu Kumar Joshi and Jyoti Joshi still sold the flat and the land to the accused No.3 Dr. Sushila Verma, by executing a sale deed dated 21.02.2007. Along with the said complaint, an application under Section 156(3) of Cr.P.C. was also filed on the basis



of which, subsequently an FIR at Crime No.470 of 2008 was also registered by the Police Station Sanyogitaganj, Indore under Sections 420, 406, 120B of IPC. Thus, the trial Court has also framed the aforesaid charges against the petitioners vide its order dated 17.09.2010, which was challenged by the petitioners in their respective Criminal Revisions before the District Revisional Court, who vide its order dated 16.03.2011, has rejected the same affirming the order of framing of charges, hence, these petitions have been filed.

4] Shri Champalal Yadav, learned senior counsel for the petitioner, Dr. Sushila Verma in M.Cr.C. No.6169 of 2011 and Shri Ashish Gupta, learned counsel for the petitioners Bhankumar Joshi and Jyoti Joshi in M.Cr.C. No.4046 of 2011 have submitted that even on perusal of the FIR itself, it can be seen that no case of criminal breach of trust is made out, as admittedly, the possession of the flat and the adjoining land were handed over by the co-accused persons Bhanu Kumar and her sister Jyoti Joshi to the complainant Meena Agrawal and thus it cannot be said that there was any dishonest intention on the part of the said accused person to cheat the complainant whereas, the petitioner Dr. Sushila Verma has been wrongly arraigned as an accused who is the bona fide purchaser of the property. It is also submitted that a civil suit is already pending between the parties, wherein an order of injunction has also been passed in favour of the complainant, and in such circumstances, it is submitted that the petition deserves to be allowed and the charges framed against the petitioner are liable to be quashed. In support of his submission, counsel for the petitioner has relied upon a decision rendered



by the Supreme Court in the case of **S.N. Vijayalakshmi and others Vs. State of Karnataka and others** reported as **AIR 2025 SC 3601**.

5] The prayer is vehemently opposed by the counsel for the respondent No.2/complainant. Shri Amar Singh Rathore, learned counsel for the respondent No.2 has submitted that no case for interference is made out at this juncture when the complainant has also been examined in the trial court on 22.01.2025, and has also supported the complaint, and all the documents relied upon by her have also been executed, copy of her examination-in-chief has also been filed on record. In support of his submissions, counsel for the respondent No.2 has also relied upon the decisions rendered by the Supreme Court in the cases of **Kamaladevi Agarwal Vs. State of W.B. and others** reported as **(2002) 1 SCC 555** and **Kathyayini Vs. Sidharth P.S. Reddy and others** reported as **2025 SCC OnLine SC 1428**.

6] Heard counsel for the parties and perused the record.

7] On perusal of the complaint, it is found that the complainant herself has stated that the accused persons have contended that apart from the initial sum of Rs.21,000/-, they have not received any other amount. This court is of the considered opinion that even accepting the complainant's contention on its face value that the documents are on record to show that they have the receipts of the payment obtained by the accused persons Bhanu Kumar and her sister Jyoti Joshi, it is also found that the complainant and the accused Jyoti Joshi entered into an agreement on 04.01.2007 in which it was specifically provided that the sale deed is required to be executed within 8 days' time however, admittedly, the entire amount of Rs.9.21 lakhs was not paid to the



accused persons and only a sum of Rs.4,76,000/- lakhs were paid within a period of around one month from the date of execution of the agreement, thus, the condition of the agreement was not fulfilled in the first place .

8] On the other hand, when the complainant had not performed her part of the agreement, even if she was aggrieved that the sale deed ought to have been executed in her favour, she could resort to civil remedies, and admittedly she has already filed a civil suit in which she sought the specific performance of the contract.

9] Whereas, the petitioner Dr. Sushila Verma is concerned, she was the purchaser of the property and even assuming that she knew about the agreement between the parties, it is also apparent that according to the agreement dated 04.01.2007 the amount was to be given within 8 days of the date of agreement i.e. on 04.01.2007, whereas the sale deed has been executed on 21.02.2007, i.e., after around 47th day, and even the stamps were purchased after the expiry of 8 days from 04.01.2007, whereas it is also found that the possession of the property was already given by the petitioners Bhanu Kumar and Jyoti Joshi to the complainant, which is an admitted fact which is clearly an indication that it was not the intention of the petitioner right from the beginning to cheat the complainant in any manner.

10] In such circumstances, this Court is of the considered opinion that although there is no bar that in respect of a dispute regarding which a civil suit is filed, a criminal case can also be instituted, but the present is not the case where the complainant could avail both the remedies simultaneously, in fact, the only remedy, which was available to the



complainant was to file a civil suit and which remedy she has already availed.

11] So far as the contention of Shri Rathore, learned counsel for the respondent no.2, that she has already been examined in the trial court, this court is of the considered opinion that while testing if any offence as alleged in the FIR or Complaint is made or not, even assuming the contents of the same to be true, it is hardly relevant that the complainant is examined in the trial court, as it would be unjust for the court to relegate the petitioners to contest the trial in which even the ingredients of the offences alleged are not made out. While holding so, this court is also aware of the trite law that an FIR is not an encyclopedia, and at times subsequent statements/evidence are also required to be looked into to arrive at a decision, but legality of a criminal case cannot be put into a straitjacket formula to hold that one size fits all, hence legality of every case has to be tested on its own merits.

12] In addition, the aforesaid reasoning also has a background to it which is also necessary to mention here. As can be seen, this petition was filed in the year 2011, and the proceedings reveal that it was finally heard and allowed by this court on 01.04.2014 i.e., after **around 3 Years**. However, the said order dated 01.04.2014 was recalled by this court on an application filed by the respondent no.2 complainant on the ground that the name of the complainant's counsel was not shown in the cause list. Thus, after recalling the final order dated 01.04.2014, on 20.04.2015, this court again fixed the matter for final hearing. Thus, it was again heard finally on 28.01.2026 i.e., **after a period of 11 years**. Thus, it can be seen that the petition was kept pending before this court for a



considerable period of 15 years and during this time, there was no stay in operation, but the trial court did not proceed further for unknown reasons, however, the respondent no.2/complainant has been examined on 22.01.2025. It is thus apparent that there was no fault on the part of the petitioners in causing the delay of 15 years as the delay was procedural and systemic. In such circumstances, it would be sheer unjust and unfair to hold that merely because now the evidence is also led by the parties, the petitioner has lost its right to invoke the inherent powers of this court or that the inherent powers of this court are fettered in any way due to subsequent developments.

13] So far as the decisions relied upon by the counsel for the respondent No.2 in the cases of **Kamaladevi Agarwal** and **Kathyayini (supra)** are concerned, the same are distinguishable on facts.

14] In view of the same, this Court has no hesitation to hold that it is certainly not a case where the charges under Sections 420, 406, 120B of IPC could have been framed against the petitioners and to allow the trial court to further proceed with the matter would be nothing but the misuse of the powers of the court.

15] Accordingly, both the petitions stand **allowed**, and the impugned orders dated 16.03.2011 and 17.09.2010 are hereby set aside, and the petitioners are discharged of the offences charged.

(SUBODH ABHYANKAR)
JUDGE

Pankaj