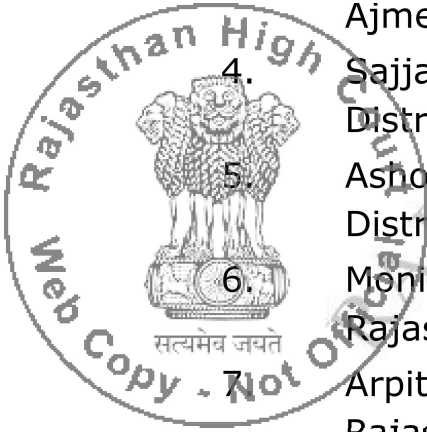




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 1635/2022

1. Pradeep Kumar Son Of Shri Dharam Chand, R/o Gulabpura, Bhilwara Rajasthan
2. Basant Kanwar W/o Dharimchand, R/o Kekri, District Ajmer Rajasthan
3. Vinay Kumar S/o Shri Dharimchand, R/o Kekri, District Ajmer Rajasthan
4. Sajjan Kumar Son Of Shri Dharimchand, R/o Kekri, District Ajmer Rajasthan
5. Ashok Kumar Son Of Shri Dharimchand, R/o Kekri, District Ajmer Rajasthan
6. Monika D/o Shri Dharimchand, R/o Kekri, District Ajmer Rajasthan
7. Arpita D/o Shri Dharimchand, R/o Kekri, District Ajmer Rajasthan
8. Subham Son Of Shri Dharimchand, R/o Kekri, District Ajmer Rajasthan
9. Sushila Kumari D/o Shri Vimal, R/o Kekri, District Ajmer Rajasthan
10. Rekha Kumari D/o Shri Vimal, R/o Kekri, District Ajmer Rajasthan
11. Abha D/o Shri Vimal, R/o Kekri, District Ajmer Rajasthan
12. Rakesh Kumar Son Of Sambhu Singh, R/o Kekri, District Ajmer Rajasthan
13. Paras Kumar @ Piru Kumar Son Of Sambhu Singh, R/o Kekri, District Ajmer Rajasthan
14. Asha D/o Sambhu Singh, R/o Kekri, District Ajmer Rajasthan
15. Laxmi Sethiya D/o Sambhu Singh, R/o Kekri, District Ajmer Rajasthan
16. Rajni W/o Selender Singh, R/o Kekri, District Ajmer Rajasthan
17. Ramakant Son Of Kailash Chand Chowkdiwal, R/o Kekri, District Ajmer Rajasthan

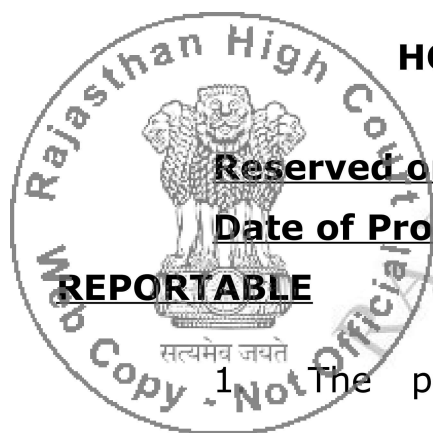




District Ajmer Rajasthan

----Respondents

For Petitioner(s)	:	Mr. Rajneesh Gupta Mr. Nishant Sharma Ms. Shashi Bala Jain
For State	:	Mr. Prashant Sharma, PP
For Respondent(s)	:	Mr. HV Nandwana Mr. Yash Vardhan Nandwana



HON'BLE MR. JUSTICE BIRENDRA KUMAR

Order

Reserved on : **12/05/2022**

Date of Pronouncement : **18/05/2022**

REPORTABLE

1. The petitioners have sought for quashement of FIR No.0034/2022 registered under Sections 420, 467, 468, 471 and 120-B IPC on the grounds that:

“(1) to settle a civil dispute, respondent No.2 has opted for a criminal proceeding which is not permissible in law;
(2) the ingredients of none of the offences for which FIR was registered are made out, hence the criminal prosecution would be abuse of the process of the Court.”

2. The background of this case is that respondent No.2 entered into separate agreements with the petitioners from 31.3.2013 onwards to purchase their individual share in plot No. 5089, 5096, 5097, 5098 and 5103. In each of the agreements, it is specifically mentioned that for the plots above, a case is pending before the Rajasthan High Court. Bench Jaipur, the petitioners would get the



make payment of the remaining consideration money within six months and get the sale deed registered. If the petitioners would not abide by the terms and conditions between the parties, respondent No.2 would have a right to get the sale deed registered by order of the Court. If the respondent No.2 would fail to get the documents registered within six months aforesaid, the petitioners would have a right to utilise the earnest consideration money and the agreement would be deemed to have been cancelled automatically. Copy of the agreements are on the record.

3. नये The petitioners sent registered legal notice to respondent No.2 from 12.7.2016 onwards separately stating therein that SB Civil Writ Petition No. 5425/1999 pending before the Rajasthan High Court, Bench Jaipur against the order of Board of Revenue has already been decided on 11.4.2012 which is known to respondent No.2 Kamal. Thereafter, mutation case No. 2993 dated 24.12.2013 and other mutation cases were registered which is also known to the complainant. The petitioners asked the complainant to make payment of the remaining consideration money and get the registered sale deeds otherwise the agreement would be deemed to be cancelled. The complainant did not send any reply to those legal notices, thereafter it is stated that the petitioners sold a portion of the land to some other person. For that the complainant got FIR No. 36/2019 registered on 16.1.2019



4. According to the First Information Report, the complainant had entered into agreement to purchase the referred plots with the petitioners and the part consideration money was paid and it was decided that the petitioners would get their names recorded in the revenue records and thereafter sent a notice of the same to the complainant and the complainant would within six months get the sale deed executed after paying the remaining consideration money. It is specifically mentioned in FIR as to in which mutation case, who of the petitioners was recorded with respect to which number of the plot. The allegation is that one sister and the mother of some of the petitioners were co-sharers, were not mutated in the process of mutation of names of the petitioners on the aforesaid plots. Fraudulent intention was there of the petitioners in not getting the name of the petitioners' sister and mother recorded. Allegation is that petitioners misappropriated the part consideration money paid to them and they have sold the land to some other person just to defraud the complainant.

5. On the basis of the background aforesaid and averments in the FIR, learned counsel for the petitioners submits that in fact, the matter in dispute is performance/non-performance of the agreement to sale between the parties and responsibility of the party to not act as per agreement and the whole issue can be decided only by a competent civil court and not by a criminal court. The ingredients of offences are not made out as at no point



on **T.T. Antony Vs. State of Kerala & ors., (2001) 6 SCC 181;**
Murarali Lal Gupta Vs. Gopi Singh (2006) 2 WLC (SC) Cr. 96
and Mohammed Ibrahim & ors. Vs. State of Bihar & Anr.,
reported in (2009) 8 SCC 751.

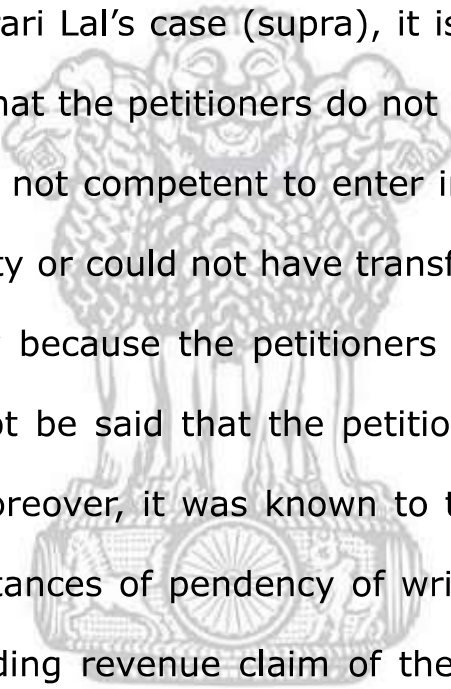
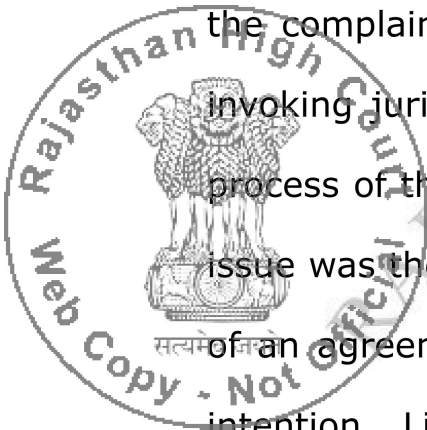
6. To the contrary, learned counsel for the complainant respondent contends that one of the petitioner Pradeep Kumar for the first time filed petition on 18.9.2018 before Sub Divisional Officer, Kekri informing that the sister is also a legal heir and party to the proceedings before the Board of Revenue, however due to mistake her name was left in the decree therefore she also be included in the decree dated 18.11.2013 and decree be corrected accordingly. Therefore, execution of the agreement on the part of respondent No. 2 was delayed due to laches on the part of petitioners. In fact on 5.11.2018, an exercise of mutation of names of the petitioners was completed but the petitioners sold the land for ulterior motive to defraud the complainant.

7. Learned counsel has relied on the judgment of **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & ors., reported in 2021 SCC OnLine SC 315** for his submission that it has been settled by the Hon'ble Supreme Court after considering catena of decisions rendered earlier that the High Court while exercising jurisdiction under Section 482 Cr.P.C are required to be more cautious as the jurisdiction is more onerous and more diligent duty is cast on the courts. The FIR disclosing cognizable



examination of the facts contained in the FIR by acting as an appellate Court.

8. After hearing the learned counsel for the parties and considering the material on record, this Court is of the prima facie view that real dispute between the parties is of civil nature which cannot be adjudicated by a criminal court, hence the attempt of the complainant to get the civil dispute resolved by resorting to invoking jurisdiction of a criminal court amounts to abuse of the process of the Court. In Murari Lal Gupta's case (supra), identical issue was there before the Court as to whether the facts of breach of an agreement to sell property makes out a case of fraudulent intention. Like, Murari Lal's case (supra), it is not the case of the respondent herein that the petitioners do not have the property or the petitioners were not competent to enter into an agreement to sale the said property or could not have transferred the title to the respondent. Merely because the petitioners failed to honour the agreement, it cannot be said that the petitioners had cheated to the respondent. Moreover, it was known to the complainant, the intervening circumstances of pendency of writ petition before the High Court for deciding revenue claim of the same property and pendency of the mutation matter. The complainant was aware of the legal notices sent to him by the petitioners through registered post disclosing details of the developments of the pending matter but respondent No.2 did not choose to send a reply and kept mum





petitioner. Forgery is defined under Section 463 IPC which includes making of false document as defined under Section 464 IPC and use of that forged document punishable under Section 471 IPC. There is no averment at all that the petitioners were involved in making any false document or used the said forged document as genuine document. Therefore, offence under Sections 468, 469, 471 and 120-B IPC are also not made out. The complainant had separately entered into an agreement with all the petitioners knowing the fact well that the petitioners have transferable right in the property, the legal notices sent by the petitioners separately through registered post to the complainant shows that they were always willing and ready to perform their part of the agreement. Thus, totality of the material available on record discloses the ingredients of none of offences for which the FIR was registered, therefore, the FIR is not sustainable, for this reason also.

9. Cases relied by the respondents are not applicable in the facts and circumstances of this case where civil dispute has been attempted to be decided by a criminal court without making out a case of cognizable offence.

10. Accordingly, the FIR No. 0034/2022 registered at Police Station Kekri City District Ajmer and also subsequent proceedings arising there-from stand hereby quashed and this petition is allowed accordingly. Pending application, if any, stands disposed