

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL No. _____ of 2024
[Arising out of SLP (CRL.) No.9762 of 2024]**

DHRUV ASHOKBHAI JAGANI

APPELLANT

VERSUS

THE STATE OF GUJARAT & ANR.

RESPONDENTS

ORDER

1. Leave granted.
2. Invoking the jurisdiction under Section 482, Code of Criminal Procedure, 1973¹ to quash the First Information Report² bearing C.R. No. 11210069230852 of 2023 registered with Althan Police Station, District Surat, under Sections 420 and 506(2) of the Indian Penal Code³ as well as proceedings arising therefrom, the appellant had approached the High Court of Gujarat at Ahmedabad. *Vide* impugned judgment and order dated 9th July, 2024, a learned Single Judge of the High Court declined interference. Assail in this appeal is to such judgment and order.
3. We have heard learned counsel for the appellant, the respondent no.1-State and the respondent no.2-complainant⁴.
4. Perusal of the FIR reveals that the complainant had entered into an agreement for sale with the appellant in respect of an

1 Cr. PC
2 FIR
3 IPC
4 complainant

immovable property. An advance of Rs.65,00,000/- (Rupees sixty-five lakh), in cash, had been paid by the complainant to the appellant; however, later, it was disclosed to the complainant that the said immovable property was a mortgaged property and that the secured creditor had initiated proceedings under the SARFAESI Act in respect thereof. On the asking of the appellant, the complainant lent him a further sum of Rs. 40,00,000/- (Rupees forty lakh), by cheque, to clear the outstanding dues of the secured creditor. However, despite receiving Rs. 1,05,00,000/- (Rupees One crore five lakh) from the complainant, the appellant did not execute the sale deed and breached the agreement. Upon the complainant pressing the appellant to execute the sale deed, or to return the money that had been paid/lent, the appellant threatened to kill the complainant. It was also alleged in the FIR that the appellant cheated the complainant by hiding the fact that the property was encumbered. Resting on such allegations, the complainant claimed that the appellant had committed offences punishable under Sections 420 and 506 of the IPC.

5. In course of hearing, a disclosure has been made on behalf of the complainant that he has instituted a civil suit for recovery of Rs. 1,05,00,000/- (Rupees One crore five lakh) and that such suit is pending. It has also been disclosed that the appellant has since been dispossessed from the said immovable property by the secured creditor and the same has been sold in public auction to a third party.

6. To ascertain existence of the ingredient of cheating, we need to read the agreement for sale. Having read the same, translated

version whereof is part of the paper book, we find the following clause which is relevant. It reads:

“As the said property taken into an attachment under SARFAESI Act hence the second party after releasing the said property from attachment shall have to execute the sale deed in favour of the first party.”

(We believe, this is an accurate translation of the relevant clause of the agreement for sale.)

7. The aforesaid clause in the agreement for sale, wherein the complainant himself is described as the first party/purchaser, demolishes the pointed allegation in the FIR that the appellant hid from the complainant the fact of the said immovable property being a mortgaged property. The complainant was fully aware of the status of the said immovable property, yet, he took the risk of entering into a sale agreement with the appellant. Having known about the status, it was too late in the day for the complainant to allege that the appellant had withheld from the complainant the factum of mortgage. The circumstance of deception from inception is, thus, absent. At the same time, it is the case of the complainant that he had given to the appellant Rs. 40,00,000/- (Rupees forty lakh) on loan, by cheque, to clear the outstanding dues of the secured creditor. We have also noticed from the counter affidavit filed by the complainant a statement to the following effect:

“3. That the petitioner in this case and respondent no. 2 were in an agreement to sell of a property but petitioner in this case breached the agreement and denied to transfer the property to the respondent even after taking money from him. This act of petitioner in this case amounts to the provisions of section 420 Indian Penal Code.”

It is, therefore, abundantly clear that the complainant took recourse

to the criminal laws for the purpose of settling a civil dispute.

8. Time and again, this Court has ruled that civil wrongs cannot be the subject matter of criminal wrongs. In ***Indian Oil Corporation v. NEPC India Ltd. & Others***⁵, this Court expressed lament in the following words:

"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 breakdown 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 v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

'It is to be seen if a matter, which is essentially of a 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 the 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. ... "

9. The complainant's remedy in law is to institute a suit for specific performance or in the alternative for return of the money

paid as advance, as well as for recovery of the money lent. Wise counsel has since prevailed on him. A civil suit has been instituted by him, which is pending before the civil court. Carriage of civil proceedings to its logical conclusion is a duty that the law burdens the suitor with. He would, therefore, be at liberty to pursue the civil litigation he has initiated.

10. In our view, it would be an abuse of process on facts and in the circumstances to allow the proceedings arising from the FIR to continue.

11. Insofar as the subsidiary allegation of threat to kill is concerned, the offence under Section 506, IPC is non-cognizable. Since the primary allegation relating to offence under Section 420, IPC is not made out, for reasons discussed above, we see no reason to keep the pot boiling; more so, in the absence of any whisper as to when, how and where such threat was given. Having regard to the manner of description of the incident giving rise to the offence, as alleged by the complainant, the proceedings ought to be put to rest.

12. For the reasons aforesaid, we are of the considered opinion that the High Court acted illegally in not exercising its inherent powers saved by Section 482, Cr. PC and in not acceding to the prayer for quashing the FIR and the subsequent proceedings.

13. The judgment and order of the High Court is, consequently, set aside. FIR bearing C.R. No. 11210069230852 of 2023 together with proceedings arising therefrom stands quashed.

14. The appeal is, accordingly, allowed.

15. We clarify that the civil suit instituted by the complainant

against the appellant shall be decided by the competent court on its own merits and without being influenced by any observation made in this judgment.

16. Pending interlocutory application(s), if any, stands disposed of.

.....J.
(DIPANKAR DATTA)

.....J.
(SANDEEP MEHTA)

**New Delhi;
December 03, 2024.**

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 9762/2024

[Arising out of impugned final judgment and order dated 09-07-2024 in CRLMA No.12701/2024 passed by the High Court of Gujarat at Ahmedabad]

DHRUV ASHOKBHAI JAGANI

Petitioner

VERSUS

THE STATE OF GUJARAT & ANR.

Respondents

(with I.A. No.158083/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, I.A. No.158085/2024-EXEMPTION FROM FILING O.T., I.A. No. 160028/2024-EXEMPTION FROM FILING O.T. and I.A. No.160026/2024-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 03-12-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s) Mr. Rohan Thawani, Adv.
Ms. Pooja Dhar, AOR
Mr. Pratul Pratap Singh, Adv.
Mr. Ronith Joy, Adv.
Mr. Jay A. Tamakuwala, Adv.

For Respondent(s) Ms. Swati Ghildiyal, AOR
Ms. Devyani Bhatt, Adv.
Ms. Neha Singh, Adv.

Mr. Vishal Mani, Adv.
Mr. Ajay Amritraj, AOR
Mr. Tara Chauhan, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The appeal is allowed in terms of the signed order.
3. Pending application(s), if any, shall stand disposed of.

(RASHMI DHYANI PANT)
COURT MASTER (SH)

(SUDHIR KUMAR SHARMA)
COURT MASTER (NSH)

(signed order is placed on the file)