

A STATE OF MADHYA PRADESH
v.
SURENDRA KORI
(Criminal Appeal No. 1508 of 2012)

B SEPTEMBER 26, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

C s.482 – *Exercise of inherent power by High Court – Explained.*

s.482 – *Petition seeking to quash FIR – FIR against respondents for offences punishable u/ss.420, 467, 468, 471 r/w ss.34 and 120B IPC and ss.34 and 81 of Registration Act – Allegations of registration of fake sale deeds on fictitious documents to avail of the Special Rehabilitation Package meant for oustees of Sardar Sarovar Project – FIR quashed by High Court – Held: Respondent was functioning as Deputy Registrar during the relevant period when more than 102 sale deeds relating to the same transaction were executed and all those documents were prima facie found to be forged so as to get the benefit of the Package which was meant for the Project affected persons/oustees displaced from the land – Respondent was alleged, to have registered various documents relating to the Project without verifying the credentials of the purchasers and sellers and without examining that the land covered by the sale deeds was in existence or not or the lands belonged to the State Government – Further it was noticed that certain deeds were executed in respect of the lands which were not wholly situated in his own sub-districts and that the provisions of s.64 of the Registration Act were not followed – It was noticed, prima facie, that vendors and vendees were not the Project affected persons/oustees, but they wanted to avail of the benefit of the*

Package and thereby deceived the State Government as well as the Project affected persons/oustees – Respondent was suspended from the service noticing that he was also instrumental and abetted in the commission of the crime – Allegation is that the forged sale deeds were executed for unlawful gain for which the respondent has also conspired and abetted the crime – In view of the magnitude of the crime, the number of documents alleged to have been executed fraudulently, the reports referred to in the charge-sheets and the involvement of the respondent etc. could be decided only if an opportunity is given to the prosecution – High Court, in such circumstances, was not justified in quashing all the First Information Reports and the charge-sheets in exercise of its powers u/s. 482 – Judgments of High Court are set aside.

M.M.T.C. Ltd. & Anr. vs. Medchl Chemicals & Pharma (P) Ltd. & Anr. 2001 (5) Suppl. SCR 265 = 2002 (1) SCC 234; State of Orissa and Another v. Saroj Kumar Sahoo 2005 (5) Suppl. SCR 548 =(2005) 13 SCC 540 and Eicher Tractors Ltd. v. Harihar Singh (2006) 12 SCC 763 relied on.

Jambu Prasad v. Mohammad Nawab Aftab Ali Khan AIR 1941 PC 16 referred to.

Case Law Reference:

2001 (5) Suppl. SCR 265 relied on para 13

2005 (5) Suppl. SCR 548 Relied on para 13

(2006) 12 SCC 763 Relied on para 13

AIR 1941 PC 16 Referred to para 16

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1508 of 2012.

From the Judgment & Order 22.01.2009 of the High Court of Madhya Pradesh, Jabalpur Bench at Indore in Miscellaneous Criminal Case No. 1073 of 2008.

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WITH

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C.A. Nos. 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560 and 1561 of 2012.

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Sidharth Dave, Abhimanyu Singh, C.D. Singh for the Appellant.

Ardhendumauli Kumar Prasad for the Respondent.

The following Order of the Court was delivered

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1. Leave granted.

2. Heard learned counsel on either side.

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3. We are disposing of all these fifty four appeals by a common order since the identical issues arise for consideration in all these appeals. For the purpose of disposal of these appeals, we may refer to the facts in Criminal Appeal arising out of SLP (Crl.) No. 3149 of 2010, treating the same as the leading case.

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4. The respondent herein, who was functioning as the Deputy Registrar, Khargone, was charge-sheeted for offences punishable under Sections 420, 467, 468, 471 read with Sections 34 and 120B of the Indian Penal Code (for short 'IPC') and under Sections 34 and 81 of the Registration Act. The High Court of Madhya Pradesh, Jabalpur Bench, in exercise of its powers conferred under Section 482 of the Code of Criminal Procedure (for short 'CrPC'), quashed the First Information Reports and the charge-sheets filed against the respondent and also quashed the criminal case No. 2500 of 2007 and other

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connected matters. In order to properly appreciate the correctness or otherwise of the orders passed by the High Court, it is necessary to refer to few facts. A

5. State of Madhya Pradesh had introduced a Special Rehabilitation Package (for short 'Package') for those persons who were displaced from their lands, submerged while implementing the Sardar Sarovar Project (for short 'the Project'). As per the Package, for the Project affected persons/oustees, cash benefit in two installments was provided to enable them to purchase land of their choice. The amount would be deposited in bank accounts of the oustees and the first installment would be released when the oustees submits an affidavit intending to purchase land and the second and final installment would be released when both the seller and the purchaser would get their sale deed registered and submit the proof of such registration of sale deed. For availing of the benefit of that Package it was alleged, various fake sale deeds were got registered in the Registrar's Office at Khargone. Complaints were raised about the manner in which the benefit of the Package was availed of by persons who were not affected by the Project. Narmada Bachao Andolan also filed a complaint before the Narmada Valley Development Authority regarding registration of fake sale deeds for claiming the benefit of the Package. B
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6. The Collector, District Khargone, vide its letter dated 23.7.2007, directed the Deputy Collector, Khargone to conduct an inquiry and submit a report. The Deputy Collector submitted the report on 11.9.2007. The operative portion of the report reads as follows: F

"Because the detailed enquiry of these sale transactions do not seem to be possible without the police action; therefore registering of the Criminal Case and sending this initial enquiry report to the Narmada Valley Development Authority for the proceedings of sentencing the guilty persons after detailed enquiry and getting the case G
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A registered for the police action by the land acquisition officer through the Collector of the concerned district are proposed.”

B Further, referring to several sale deeds, it was specifically pointed out that some of the vendees and vendors of the documents were fictitious persons and deeds were executed and registered fraudulently.

C 7. Several FIRs were registered on the complaints filed by the Rehabilitation Officer of the Project, District Khargone before the Kotwali Police Station. In the FIR No.496 dated 18.9.2007 the report of the Deputy Collector dated 11.9.2007 was specifically referred. The operative portion of the FIR reads as follows:

D “12.Reference: - received the letter no. 791 dated 11.9.2007 of the Collector, Khargon for necessary action. Regarding the aforesaid subject, it is said that name –

E displaced (Vendee) Naniya s/o Hariya r/o Gangli has received amount of Rs.3,39,857/- as the special rehabilitation grant after submitting the registration serial no. A-1/2575 dated 25/3/2006. The additional Collector, Khargon has found this in the enquiry of the said registration that in the sale deed the survey no. is wrong.

F The vendor is neither the resident of village nor there is any existence of the vendor in the village. Therefore prima facie the sale transaction has been found to be illegal. In this regard the vendee has submitted after preparing the said forged registration fraudulently in conspiracy after being in agreement with the vendor Amar Singh s/o Chandar Singh Caste- Rajput, r/o Bamhnala and with the witnesses (1) Ashiq s/o Alabali Pinjara, r/o Sondul Dist. Barbani (2) Jagdish s/o Pataliya r/o Dehdala and with the deed writer, B. L. Gupta, Ravindra Nagar Baheti near the tower Khagon with the purpose of receiving improper and

G illegal benefit from the land of khasra no. 76 of the village Pokharbujurg, tehsil Bhikhangaun, dist. Khargon. On the

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basis of the said forged registration he has committed A
offence after putting the government in financial loss of
Rs.3,39,857/- improperly. Therefore the essential legal
action may be taken against the vendee Naniya s/o
Hariya r/o Gangli, tehsil Manawar Dist. Dhar, against the
vendor Amar Singh s/o Chandar Singh Caste – Rajput, r/ B
o Bamhnala and against the witnesses (1) Ashiq s/o
Alabali Pinjara, r/o Sondul dist. – Barbani (2) Jagdish s/o
Pataliya r/o Dehdala and against the deed writer, B.L.
Gupta, Ravindra Nagar Baheti near the tower Khargon.
The report regarding the forged registration in the sub C
registrar office Khargon has been submitted.

Annexure:-

1. The letter no. 791 dated 11/9/07 of the Collector D
Khargon, with the photocopy of the enquiry report.
2. The photocopy of the registration no. A-1/2575
dated 25/3/2006 - signature Ashok Kumar Modi,
rehabilitation officer, Sardar Sarobar Project,
Manbaj, Dist. Dhar. E

13. The action taken in connection with the aforesaid
description u/ss 420, 467, 468, 469, 471, 34. After
registering the case it was taken for investigation/not taken
and the case was handed over to Om Prakash Mishra
(inspector/sub inspector) or in the light of the jurisdiction it F
was transferred to the P.S. —dist.”

8. We find that the Department of Registration of the State
of Madhya Pradesh, after having come to know about the
registration of sale deeds on large scale between 1.4.2005 and G
31.3.2007, also ordered for an enquiry after placing the
respondent who was the Deputy Registrar, Khargone at the
relevant point of time under suspension. Detailed enquiry was
conducted by the District Registrar, Khargone and he submitted
the report on 27.10.2007 to the Inspector General H

A (Registration), State of Madhya Pradesh. In the enquiry following procedural irregularities were found:

B “1. Even the photocopies of the copy of Khasara of five years have been accepted. Detailed description is mentioned in the annexed list.

C 2. Under the section 30(1) of the Registratin Act the sub Registrar, Head Quarter, has not realized the additional fee of Rs.200/- under the Article -7 of the Registration Fee Table in the registration of the concerned deeds related to the property situated in other tehsils of the district and Rs.10/- under the article-10 of the said table.

D 3. Under the section-30(1) of the Registration Act 1908 the Sub Registrar, head quarter, has not sent memos to the concerned sub registrars under the section-64 of the said Act in the registration of the concerned deeds related to the properties situated in other tehsils of the district.

E 4. Affidavits have not been sworn and filed in the deeds related to the agricultural land in compliance of the Circular No. 2822/tak/one/2005 dated 21.11.2005 of the Inspector General-Registration; Bhopal. Detailed description is available in the annexed list.

F 5. According to the Circular No.3610/tak/one/2004 dated 15.12.04 of the Inspector General, Registration, Bhopal, the P.A.N. Card nos. of the vendors and vendees have not been got mentioned at the time of registration of the deeds of the valuation of Rs. Five lacs or of more than that according to the provisions of sections 139A of the Income Tax Act 1961 and of Rules 114 kh and 114 gh framed there under. According to the report received from the sub registrar, Khargon, dated 26.10.2007 the draft nos 60 and 61 have not been received. The concerned deeds have been mentioned in the annexed list.

H 6. In the deeds the photo copies of the certificates of the

Land Acquisition Officer have been accepted instead of originals, the description of which has been in the annexed list. A

7. The information regarding the loan book has been shown in the annexed list." B

9. The Investigating Officer took note of the above mentioned reports and a final report (charge-sheet No. 546 of 2007) was submitted under Section 173(8) Cr.P.C. before the Court against the respondent and also against persons who got the sale deeds executed on 25.3.2006 and the charge was laid under Sections 420, 467, 468, 469, 471 read with Sections 34 and 120-B of the IPC and under Sections 34 and 81 of the Registration Act, 1908. The operative portion of the charge-sheet reads as follows: C

"The brief description of the occurrence is like this that on 18/9/07 one written application with the deed for enquiry was brought and submitted. Naniya, s/o Hariya, r/o Gangli has received the amount of Rs.339857/- as the special rehabilitation grant after submitting the registration no. A-1/2575 dated 25/5/3006 the additional collector, Khargaon, has found this in the enquiry of said registry that the survey no. of the sale deed is wrong. *The vendor is not the resident of the village nor has the vendor got any existence in the village. Therefore prima facie itself the sale transaction was found to be illegal.* In this regard, the vendee has submitted after preparing the said forged registration fraudulently & in conspiracy after being in agreement with the vendor – Amar Singh s/o Chandar Siknggh Caste- Rajput, r/o Bamhnala and with the witnesses (1) Ashiq s/o Alabali Pinjara, r/o Sondul dist. Barbani (2) Jagdish s/o Pataliya r/o Dehdala and with the deed write, B. L. Gupta, Ravindra Nagar Baheti near the tower Khargon with the purpose of receiving improper and illegal benefit from the land of khasra no. 76 of the village Pokharbujurg, tehsil Bhikhangaun, dist. Khargon. On the D
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A basis of the said forged registration he has committed
 offence after putting the government in financial loss of
 Rs.339857/- improperly. In the case the accused B.L.
 Gupta and Surendra Kori also have been arrested. In the
 B case the document of the bank has remained to be
 received and the proceeding of the comparison of the
 thumb impression of the accused Naniya is yet to be done,
 regarding the accused B.L. Gupta evidence is to be
 collected. *Regarding the accused Surendra Kori the*
 C *certified hand writing examination report and the*
necessary documents and the statement of the district
registrar are to be taken. The accused Surendra Kori has
abetted in committing the offence of criminal conspiracy
 D *in the crime and he has misused his position. In this*
regard also investigation is being done and permission
is being sought for submitting the charge sheet against
 E *the accused. In this case the comparison of the*
impressions of the fingers and the arrest of the rest
accused persons are to be done. The enquiry report of the
 F *additional collector, Khargon and his statement are yet to*
be taken. In spite of the attempts made till now they could
not be taken up till now. In this case the offence against
 the accused Naniya on being found confirmed after
 preparing the charge sheet 546/07 u/s 173(8) is yet to be
 submitted. In the case investigation is still going on, after
 finishing which the full charge sheet will be submitted
 separately.”

10. Respondent herein then approached the High Court
 to quash the FIRs as well as various charge-sheets filed against
 him. It was contended before the High Court that the
 G respondent, under the Registration Act, was bound to register
 the sale deeds in the capacity of the Sub-Registrar. Further, it
 was also pointed out that he had no obligation or duty to
 ascertain about the correctness or genuineness of the
 documents which were brought before him for registration.
 H Further, it was also pointed out that the respondent had no

knowledge about the alleged forgery or the fraudulent manner in which the sale deeds were sought to be registered. The Deputy Government Advocate appearing for the State contended that it was after conducting a detailed enquiry through the District Registrar, Khargon it was found that the respondent was also involved in the fraudulent transactions and had abated the parties in getting those sale deeds executed.

11. The High Court took the view that the respondent, in the capacity of the Sub-Registrar and functioning under the Registration Act, was bound to register the documents brought before him and was not expected to ascertain about the correctness and genuineness of the title of the property and also whether there was any conspiracy between the vendors and vendees in getting those sale deeds executed. Further, it was also pointed out that the enquiry reports revealed that there were only procedural irregularities in the registration of sale deeds and there was nothing to show respondent's involvement in getting those sale deeds executed. The Court held that on the basis of the provisions of Section 34 of the Registration Act, the respondent could not be held liable on the ground that he had not verified the title of the vendor of the property alleged to have been sold. The High Court, therefore, in exercise of its powers conferred under Section 482 of the CrPC, allowed the revision petitions and set aside the FIRs and the charge-sheets filed against the respondent in all the cases and the criminal cases registered against him were quashed. Aggrieved by the same, these criminal appeals have been filed by the State.

12. Shri Sidharth Dave, learned counsel appearing for the State, submitted that the High Court has committed an error in holding that the duty of the Registrar is only to register the sale deeds. Learned counsel further submitted that, in a given case, if it is established, *prima facie*, that the Registrar is also instrumental in aiding the execution of several sale deeds by fictitious persons so as to appropriate the benefit under the Package resulting loss to the State Exchequer, he is also

A liable, if found to have been abetted in committing the crime. Learned counsel pointed out that it was after conducting a detailed enquiry by the District Collector and the Registrar of the Registration Department that charges were leveled against the respondent. Learned counsel pointed out that such a large
 B number of sale deeds could not have been executed without the knowledge or active connivance of the respondent. Learned counsel appearing for the respondent submitted that there is no illegality in the order passed by the High Court which calls for interference by this Court in these appeals.

C 13. The High Court in exercise of its powers under Section 482 CrPC does not function as a Court of Appeal or Revision. This Court has, in several judgments, held that the inherent jurisdiction under Section 482 CrPC, though wide, has to be used sparingly, carefully and with caution. The High Court, under
 D Section 482 CrPC, should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of wide magnitude and cannot be seen in
 E their true perspective without sufficient material. In *M.M.T.C. and Another v. Medchl Chemicals & Pharma (P) Ltd. and Another* (2002) 1 SCC 234, this Court held as follows:

F “The law is well settled that the power of quashing criminal proceedings should be exercised very stringently and with circumspection. It is settled law that at this stage, the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer
 G an arbitrary jurisdiction on the Court to act according to its whim or caprice.....”

In *State of Orissa and Another v. Saroj Kumar Sahoo* (2005) 13 SCC 540, this Court held as follows:

H “Exercise of power under Section 482 of the. Cr.P.C.

in a case of this nature is the exception and not the rule. A
The Section does not confer any new powers on the High
Court. It only saves the inherent power which the Court
possessed before the enactment of the Cr.P.C. It
envisages three circumstances under which the inherent
jurisdiction may be exercised, namely, (i) to give effect to B
an order under the Cr.P.C., (ii) to prevent abuse of the
process of court, and (iii) to otherwise secure the ends of
justice. It is neither possible nor desirable to lay down any
inflexible rule which would govern the exercise of inherent
jurisdiction. No legislative enactment dealing with C
procedure can provide for all cases that may possibly
arise. Courts, therefore, have inherent powers apart from
express provisions of law which are necessary for proper
discharge of functions and duties imposed upon them by
law. That is the doctrine which finds expression in the D
section which merely recognizes and preserves inherent
powers of the High Courts. All courts, whether civil or
criminal possess, in the absence of any express provision,
as inherent in their constitution, all such powers as are
necessary to do the right and to undo a wrong in course E
of administration of justice on the principle "quando lex
aliauid alicui concedit, concedered videtur et id sine guo
resipsae esse non potest" (when the law gives a person
anything it gives him that without which it cannot exist).
While exercising powers under the section, the court does F
not function as a court of appeal or revision. Inherent
jurisdiction under the section though wide has to be
exercised sparingly, carefully and with caution and only
when such exercise is justified by the tests specifically laid
down in the section itself....."

This Court, again, in *Eicher Tractors Ltd. v. Harihar Singh*
(2006) 12 SCC 763, held as follows: G

"When exercising jurisdiction under Section 482 of the
Code, the High Court would not ordinarily embark upon an H

A enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge.”

B 14. We are of the view that the principles laid down by this Court in the above mentioned judgments would squarely apply to the facts and circumstances of the present case. We are in these cases concerned with the execution of several fictitious sale deeds the purpose of which was to make unlawful gain. Special Rehabilitation Project as already indicated was introduced to give cash compensation to the oustees and Project affected families which are an inter-state Project of four States involving Madhya Pradesh, Rajasthan, Maharashtra and Gujarat. The Rehabilitation and resettlement is governed by the Narmada Water Disputes Tribunal (NWBT) Award. The respondent, it was alleged, registered various documents relating to the Project without verifying the credentials of the purchaser and seller and without examining that the land covered by the sale deeds is in existence or not or the lands belongs to the State Government. Office of the Registrar, it was pointed out, had issued an O.M. dated 28.4.2005 to all the Sub-Registrars stating that while registering the sale deeds in order to prevent registration of fake sale deeds to verify the identity of the seller for which he has to ask for photo identification proof from the seller such as PAN Card or Passport, which was not done. Further it was noticed that certain deeds were executed in respect of the lands which were not wholly situated in his own sub-districts and that the provisions of Section 64 of the Registration Act was not followed.

G 15. The respondent herein was functioning as Deputy Registrar at Khargone during the period from 1.4.2005 to 31.3.2007 when more than 102 sale deeds relating to the same transaction were executed and all those documents were *prima facie* found to be forged so as to get the benefit of the Package which was meant for the Project affected persons/oustees

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displaced from the land. It was noticed, *prima facie*, that vendors and vendees were not the Project affected persons/ oustees, but they wanted to avail of the benefit of the Package, thereby deceived the State Government as well as the Project affected persons/oustees. The respondent was suspended from the service noticing that he was also instrumental and abetted in the commission of the crime. The allegations raised in the charge-sheets are *prima facie* allegations and the question of involvement of respondent has to be finally decided depending upon the evidence in the case and, at this moment, we are only concerned with the indications raised in the First Information Reports and charge-sheets. Allegation is that the forged sale deeds were executed for unlawful gain for which the respondent has also conspired and abetted the crime. Further the charge-sheet also refers to Section 34 of the Registration Act which reads as follows:

34. Enquiry before registration by registering officer

(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the person executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:

PROVIDED that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

- A (3) The registering officer shall thereupon-
- (a) enquire whether or not such document was executed by the person by whom it purports to have been executed;
- B (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and
- (c) in the case of any person appearing as a representative, assignee or agent, satisfy himself of the right of such person so to appear.
- C (4) Any application for a direction under the proviso to subsection (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.
- D (5) Nothing in this section applies to copies of decrees or orders.

E 16. In *Jambu Prasad v. Mohammad Nawab Aftab Ali Khan* AIR 1941 PC 16 states that the object of this Section is to make it difficult for persons to commit frauds by means of registration under Act. Further there is a presumption under Section 114 of the Evidence Act that official acts have been performed in accordance with the procedure laid down under the Registration Act. Therefore, when a document has been

F duly executed there will be a presumption that it has been registered in accordance with law and the onus is on the prosecution to show that the respondent has abetted in committing the offence of criminal conspiracy in the crime and has misused his position and was a party to the fraud.

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17. Section 81 of the Registration Act deals with penalties which reads as follows:

H "81. *Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure* Every

registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury, as defined in the Indian Penal Code, to any person, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both."

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18. The question is whether the respondent was aware that such deeds were executed for getting unlawful gain, which may cause injury to another person as defined under Section 44 of the Indian Penal Code is a matter which can be established only on adducing evidence.

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19. We are of the considered opinion that in view of the magnitude of the crime, the number of documents alleged to have been executed fraudulently, the reports referred to in the charge-sheets and the involvement of the respondent etc. could be decided only if an opportunity is given to the prosecution. The High Court, in such circumstances, was not justified in quashing all the First Information Reports and the charge-sheets in exercise of its powers under Section 482 CrPC.

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20. We make it clear that whatever we have stated above are only *prima facie* observations which would not bind the trial Court while deciding the criminal cases. The criminal appeals are accordingly allowed and the judgments of the High Court are set aside.

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R.P.

Appeals allowed.