breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.

8. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

9. At the trial, the Trial Court shall not be influenced by the observations of preliminary nature qua the evidence at this stage made by this Court while enlarging the appellant on bail.

10. This Criminal Appeal is allowed accordingly. Direct service is permitted.

***Result*:-** Bail granted.

ABC 2019 (III) 299 GUJ

ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(A.S. Supehia, J.)

R/Special Criminal Application No 11749 of 2018 With Criminal Misc.Application (For Joining Party) No. 1 of 2019 In R/Special Criminal Application No. 11749 of 2018

Decided on 01 August 2019

BHADRESHBHAI NANUBHAI RAJPARA ***- Applicant(s).***

Versus

STATE OF GUJARAT & ORS. ***- Respondent(s).***

Law Covered*:-** ***Indian Penal Code, 1860 — Section 120B, 468, 471, 114, 467, & 465 — Registration of FIR — Allegation of misleading the Court — no such documents are pointed out no offence as alleged by the petitioner in his complaint can be said to have been established— Held, It was/is always open to the petitioner to point to the concerned civil court about the forgery of the documents which are produced in the civil suit — the dispute is in civil nature— Merely because an F.I.R is registered, the same will not ipso facto result into any criminal liability — unless it is revealed that the allegations point to any cognizable offence — report filed by the investigation officer that no offence is established stands vindicated— petition rejected. (Para 9)

October & November 2019

Held:- The central grievance of the petitioner is that one Bhadresh Fakirchand Shah, the applicant of the captioned application (for joining party), has entered into compromise with one Laxmiben in the civil suits filed being Regular Civil Suit Nos.117/2003, 308/1997, 247/1992 by misleading the Court and the same was allowed to be withdrawn unconditionally on 09.09.1997. It is further alleged that Bhadresh Fakerchand Shah has instituted Special Civil Suit Nos.525 to 527 of 2000 for cancellation of the sale deed of the land belonging to the petitioner, and in the said suit by suppressing the relevant fact and has also filed an application for withdrawing the suits in the civil court. The petitioner has also instituted Civil Suit No.205 of 2000 challenging the sale deed dated 30.04.1999, despite the repeated requests made by this Court to the learned advocate for the petitioner to point out the alleged forged or false documents affecting his right, title or interest in the suit property, neither such documents are placed on record of the petition nor they are shown to this Court. It is reiterated by the petitioner that the suits which are instituted before the Civil Court pertaining to the property in question are illegally settled and withdrawn by keeping the Court in dark. Except making the aforesaid submissions nothing is pointed out to this Court. In wake of the fact that no such documents are pointed out no offence as alleged by the petitioner in his complaint can be said to have been established. It was/is always open to the petitioner to point to the concerned civil court about the forgery of the documents which are produced in the civil suit. The aforementioned facts reveal that the dispute is in civil nature, as rightly held by the investigation officer. Merely because an F.I.R. being C.R. No.I389 of 2005 is registered at the behest of one Laxmiben against, the applicant Bhadresh Fakirchand Shah of the captioned application, the same will not ipso facto result into any criminal liability apro pos the petitioner, unless it is revealed that the allegations point to any cognizable offence. It is also not dispute that there are various civil litigations pending with regard to the disputed land. The civil court is seisin of all the documents as referred to by the petitioner in his complaint. The report dated 22.7.2019 filed by the investigation officer, Police Inspector Adajan Police station, Surat city opining on the complaint dated 04.08.2019 that no offence is established stands vindicated. (Para-9)

Counsel:- ***For Applicant(s):*** *Mr Manan A Shah, Adv.*
For Respondent(s): *Public Prosecutor*

October & November 2019

JUDGMENT

a ***A.S. SUPEHIA, J.: -*** 1. **Rule**. Learned Additional Public Prosecutor Mr.Hardik Soni waives service of notice of Rule on behalf of the respondent-State.

2. The present application has been filed by the petitioner
b seeking following prayers:

> "*(A) YOUR LORDSHIPS may be pleased to pass appropriate orders, writ or direction, directing the respondents to forthwith register the FIR in pursuance to written complaint dated*
c *4.8.2018 (AnnexureA) given by the petitioner, in the interest of justice;*
>
> *(B) YOUR LORDSHIPS may be pleased to direct the respondent no.2 and 3 to produce the action taken report before this Hon'ble Court in pursuance to written complaints dated 4.8.2018*
d *(AnnexureA) given by the petitioner, pending the admission, hearing and final disposal of this petition;*"

3. The brief facts of the case as stated in the writ petition are as under:

e 3.1) It is the case of the petitioner that the deceased father of the petitioner had purchased 6 plots comprised in Revenue Survey Nos.255/1, 255/2, T.P. Scheme No.13, F.P. No.73 situated at Village Adajan, Dist. Surat vide notarized agreement to sell dated 27.03.1996 for a sale consideration of Rs.36,00,000/. In the same year, the
f deceased father of the petitioner had also executed a notarized agreement with the organizers. The said lands were originally owned by one Natwarbhai Becharbhai, Dhanuben Becharbhai, Sushilaben, Kamuben, Savitaben and Laxmiben Becharbhai. As on 06.01.1996, the
g names of the original owners were running in the revenue record. On the basis of revenue record, the original owners viz. Laxmiben Becharbhai Patel and others executed a notarized irrevocable power of attorney in favour of uncle of the petitioner viz. Durlabhai Kanubhai Rajpara and the said document was witnessed by
h Gopalbhai Ramubhai and Madhavbhai Kanjibhai Navadia.

3.2) The petitioner has further stated that in March, 1997, the lands in question were purchased by the registered sale deed No.8189 to 8194 by the deceased father of the petitioner Nanubhai Kanubhai, Bharatbhai Himmatbhai, Pareshbhai Hasmukhbhai from the original owners, after payment of entire sale consideration. The original

owners had also executed notarized affidavits on 28.08.1997 confirming the receipt of the entire sale consideration.

3.3) From 24.07.2000, the Shayona Cooperative Housing Society came to be registered on the lands in question. The properties constructed on the said society are having regular water connection, electricity connection etc. The said properties are assessed regularly by the Municipal Corporation. The petitioner states that he has been paying all the taxes, electricity bills for all these years.

3.4) The petitioner has asserted that on 24.10.2001, a title clearance certificate in respect of the lands in question is also obtained from one Pravinsinh M. Mahida. At page No.3 of the said title clearance certificate, it is specifically mentioned that one Bhadresh Fakirchand Shah had raised objections before the revenue authorities and in pursuance to the same, the case were registered as RTS Case No.7 of 2000. After hearing the objections raised by Bhadresh Shah, the objections were rejected and an Entry No.7604 came to be certified in favour of the petitioner-purchaser.

3.5) The petitioner has alleged that on 23.06.2018, the original owners executed an affidavit confirming the above sale consideration. In the year 2005, the original owner Laxmiben Becharbhai Patel lodged an F.I.R. being C.R.No.I389 of 2005 with Rander Police Station, Dist.Surat against Bhadresh Fakirchand Shah, Bhadresh Navalchand Zaveri and 9 others for the offence punishable under Sections 465, 467, 468, 471, 120B and 114 of the Indian Penal Code, 1860 (IPC) since all these accused, with a view to prevent the lands from going into the Urban Land Ceiling Act (ULC), created bogus persons, manipulated and tampered the revenue record, got the plans sanctioned on the basis of the forged documents etc. He has stated that in this F.I.R., the investigation is over and chargesheet is also filed. Laxmiben Becharbhai Patel has also filed an F.I.R. being C.R.No. I133 of 2006 with Athwalines Police Station, Dist.Surat against Bhadresh Fakirchand Shah for the offence punishable under Sections 504, 506(2) etc. of the IPC.

3.6) The petitioner further contends that though he has been in the ownership and in possession of the lands in question, Bhadresh Fakirchand Shah, Bhadresh Navalchand Zaveri, Kaushil Bakariya, Dipak Narottambhai Patel, Laxmiben Becharbhai Patel, Gopalbhai Ramubhai Patel have committed yet another offence by creating forged documents in the name of Swapnashil Cooperative Housing

Society. There is no such society on the lands in question. The District Registrar, Cooperative Societies has also issued certificate in this regard. The petitioner has alleged that the accused Bhadresh Fakirchand Shah and others have not only forged documents but have also used forged documents and instituted Special Civil Suit Nos.525 to 527 of 2000. However, upon coming in knowledge about the true facts, the original owners have filed 3 affidavits in the said 3 suits before the Civil Court bringing the fact of fraud committed by Bhadresh Fakirchand Shah and others and also stating the factum of sale deed executed in the year 1997 in favour of Bharatbhai Himmatbhai Patel and others. Ultimately, the said suits are withdrawn in the year 2016.

3.7) The writ petitioner also alleges that the original owners had instituted Regular Civil Suit No.117 of 2003 against Bhadresh Fakirchand Shah, wherein the accused Bhadresh Fakirchand Shah has produced judgement and decree passed in Regular Civil Suit No.308 of 1997 and Regular Civil Suit No.247 of 1992. Both these decrees were challenged in Regular Civil Suit No.117 of 2003. However, the said suit came to be withdrawn by the original owners on 09.09.2017 in connivance with Bhadresh Fakirchand Shah and others. Thus, it is the grievance of the petitioner that the accused, including the original owners are guilty of committing cheating, forgery etc.

3.8) It is alleged that the original owners Laxmiben and others, after executing agreement to sell, power of attorney, development agreement and registered sale deed in favour of the petitioner/his ancestors and filing affidavits before the competent civil court and the Subregistrar against Bhadresh Fakirchand Shah and others, have now taken a Uturn by siding with Bhadresh Fakirchand Shah and thereby, have cheated the petitioner.

3.9) The petitioner has also instituted Special Civil Suit No.205 of 2000 challenging the registered sale deed No.199 dated 30.04.1999 registered on 19.01.2000 before the civil court. Ultimately, out of the said suit, Special Civil Application No.7550 of 2002 came to be filed before this Court and this Court has directed the parties to maintain status-quo.

4. Learned Senior Counsel Mr.Percy Kavina with learned advocate Mr.Manan Shah appearing for the petitioner has submitted that every information relating to the commission of the cognizable offence of given orally, to an officer incharge of a Police Station shall

be reduced in writing by him or under his directions. He has further submitted that the provision is mandatory, the use of the word "shall" by the legislation is indicative if the statutory intent. He has submitted that in case such information is given in writing or is reduced in writing on being given orally, it is required to be signed by the persons giving it. It is further submitted that it is provided that the substance of commission of a cognizable offence as given in writing or reduced to writing "shall" be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

5. Learned advocate Ms.Kruti Shah appearing for the respondent No.4 Bhadresh Fakirchand Shah has submitted that one Becharbhai Kalidas was the original owner and in possession of Revenue Survey No.230 paiki, 375/2 and 255/1+2 situated at Village Adajan, Dist. Surat and the said owner had passed away in the year 1964. She has further submitted that the death of Becharbhai, 3 persons namely Dhanuben wd/o Becharbhai, his son Natvarbhai and other were mutated in the revenue record.

5.1 She has submitted that Natvarbhai son of Becharbhai, as a Power of Attorney holder for family members, registered an agreement to sale dated 04.10.1988 in favour of Narendrabhai and Bipinbhai for the land bearing Revenue Survey No.255/1+2, thereafter, on payment of remaining sale consideration, the possession of Revenue Survey No.255/1+2 was transferred to them on 08.06.1989. It is further submitted that at this stage, Revenue Survey No.255/1+2 was later allotted three final Plot Nos.73, 146 and 171 on implementation of T.P. Scheme No.13 (Adajan) and the dispute pertains only to Final Plot No.73.

5.2 Further, she has submitted that thereafter, the first purchaser of Revenue Survey No.255/1+2 Narendrabhai and Bipinbhai, in exercise of the rights granted to them with regard to Survey No.255/1+2 and with consent of the original land owners, executed one agreement to sale for aforesaid land in favour of Bhadresh Fakirchand Shahand others on 14.02.1990.

5.3 She has contended that one Laxmiben Becharbhai had raised her claims over the land in question by saying that she is a daughter of the first wife of Becharbhai Kalidas and because of her claims, one consent writing in favour of Bhadresh Fakirchand Shah and others was also executed in respect of the above mentioned

agreement to sale dated 14.02.1990 on 13.03.1990 by Laxmiben Becharbhai Patel and all other original land owners. She has submitted that the said fact is fortified by the fact that Laxmiben Becharbhai, who had instituted Special Civil Suit No.619 of 1989 claiming her right over the property, was withdrawn by her stating that she has no right title or interest in any of the suit properties i.e. Survey Nos. 230 paiki, 375/2 and 255/1+2.

5.4 Finally, it is submitted by learned advocate Ms.Shah that the petition requires to be dismissed on the ground of suppression of material fact since the petitioner has suppressed the fact, that a former complaint dated 04.07.2015 bearing identical facts and alleging same offence was filed after holding an investigation vide order dated 27.07.2015 on the ground that the dispute is civil in nature. She has submitted that the aforesaid vital fact has been suppressed by the petitioner and hence, the petition is required to be rejected.

6. In response, learned Senior Advocate Mr.Kavina has submitted that the petitioner, though has not referred to the filing of his complaint dated 04.07.2015 in the present petition, but he has referred in his present F.I.R., hence there cannot be said that there is any suppression of fact.

7. Learned APP Mr.Soni has submitted a report dated 22.07.2019, the same is ordered to be taken on record. He has submitted that the complaint of the petitioner was investigated by the Police Inspector, Adajan Police Station and after the investigation; the complaint of the petitioner is filed since the investigation reveals that the dispute is civil in nature.

8. Heard the learned advocates appearing on behalf of the respective parties and perused the papers of the case.

9. The central grievance of the petitioner is that one Bhadresh Fakirchand Shah, the applicant of the captioned application (for joining party), has entered into compromise with one Laxmiben in the civil suits filed being Regular Civil Suit Nos.117/2003, 308/1997, 247/1992 by misleading the Court and the same was allowed to be withdrawn unconditionally on 09.09.1997. It is further alleged that Bhadresh Fakerchand Shah has instituted Special Civil Suit Nos.525 to 527 of 2000 for cancellation of the sale deed of the land belonging to the petitioner, and in the said suit by suppressing the relevant fact and has also filed an application for withdrawing the suits in the civil court. The petitioner has also instituted Civil Suit No.205 of 2000

challenging the sale deed dated 30.04.1999, despite the repeated requests made by this Court to the learned advocate for the petitioner to point out the alleged forged or false documents affecting his right, title or interest in the suit property, neither such documents are placed on record of the petition nor they are shown to this Court. It is reiterated by the petitioner that the suits which are instituted before the Civil Court pertaining to the property in question are illegally settled and withdrawn by keeping the Court in dark. Except making the aforesaid submissions nothing is pointed out to this Court. In wake of the fact that no such documents are pointed out no offence as alleged by the petitioner in his complaint can be said to have been established. It was/is always open to the petitioner to point to the concerned civil court about the forgery of the documents which are produced in the civil suit. The aforementioned facts reveal that the dispute is in civil nature, as rightly held by the investigation officer. Merely because an F.I.R. being C.R. No.I389 of 2005 is registered at the behest of one Laxmiben against, the applicant Bhadresh Fakirchand Shah of the captioned application, the same will not *ipso facto* result into any criminal liability *apro pos* the petitioner, unless it is revealed that the allegations point to any cognizable offence. It is also not dispute that there are various civil litigations pending with regard to the disputed land. The civil court is seisin of all the documents as referred to by the petitioner in his complaint. The report dated 22.7.2019 filed by the investigation officer, Police Inspector Adajan Police station, Surat city opining on the complaint dated 04.08.2019 that no offence is established stands vindicated.

10. In view of the aforesaid observations and analysis, the writ petition fails and is rejected.

***Result*:-** Writ petition rejected.