



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 23<sup>RD</sup> DAY OF APRIL, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ**

**CRIMINAL PETITION NO. 9791 OF 2017 (482)**

**BETWEEN**

SMT. VASANTHI  
W/O LATE KRISHNAIAH SHETTY  
AGED ABOUT 59 YEARS  
R/O GABADI VILLAGE, TUDUR POST,  
THIRTHAHALLI TALUK,  
SHIVAMOGGA DIST-577226.

...PETITIONER

(BY SRI: SANKET M. YENAGI, ADVOCATE)

**AND**

SRI. UMESH G.D.  
S/O DEVAPPA GOWDA  
34 YEARS,  
R/O GABADI VILLAGE,  
MALUR POST,  
THIRTHAHALLI TALUK,  
SHIVAMOGA DIST-577232.

...RESPONDENT

(BY SRI. KARAN KHIVESRA., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CRIMINAL PROCEDURE CODE PRAYING TO QUASH THE ORDER DATED 26.09.2017 PASSED BY THE COURT OF THE ADDL. CIVIL JUDGE & JMFC, THIRTHAHALLI, TAKING COGNIZANCE AGAINST THE PETITIONERS HEREIN FOR THE OFFENCES PUNISHABLE UNDER SECTION 420, 419, 423, 415, 417, 465, 471 AND 468 OF IPC AND ISSUING SUMMONS TO THE PETITIONERSS HEREIN BY REGISTERING THE CASE IN CC.NO.780/2017, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.





THIS CRIMINAL PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 02.04.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

1. The petitioner is before this Court seeking for the following reliefs:

- a. *To quash the order dated 26.09.2017 passed by the Court of the Addl. Civil Judge & JMFC, Thirthahalli, taking cognizance against the petitioners herein for the offences punishable under section 420, 419, 423, 415, 417, 465, 471 and 468 of IPC and issuing summons to the petitioners herein by registering the case in CC.No.780/2017, in the interest of justice and equity.*
- b. *To quash the entire proceedings in CC.No.780/2017 on the file of by the Court of the Addl. Civil Judge & JMFC, Thirthahalli, in the interest of justice and equity.*
- c. *To pass such other orders/directions deem fit in the facts and circumstances of the case, in the interest of justice and equity.*

2. The petitioner is aggrieved by the order of cognizance dated 26.09.2017 taken in C.C.No.780/2017 for the offences punishable under Section 420, 419, 423, 415, 417, 465, 471 and 468 of IPC and in that background, the aforesaid reliefs have been sought for.



3. The submission of Sri.Sanket M.Yenagi, learned counsel for the petitioner is that;

3.1. On a document which is alleged to have been forged has been forged outside the Court and allegedly made use of in a suit in O.S.No.209/2015 and as such, in terms of Section 195(1)(b)(ii) of Cr.P.C., it is only the Court before which the alleged document has been produced who can initiate proceedings against the petitioner and not the complainant.

3.2. Secondly, he submits that the complainant has no *locus* inasmuch as the property which has been claimed by the complainant is Site No.4 whereas the property as regards which the alleged forgery has occurred is Site No.6 and the same does not relate to the property of the complainant and therefore, there is no *locus* to file a complaint as done since the complainant



cannot be said to be aggrieved by any such forgery.

3.3. Lastly, he submits that the suit in O.S.No.209/2015 itself has been withdrawn. Hence, the question of any proceedings being initiated for alleged forgery would not arise. The petitioner has not derived any benefit from the alleged forgery. No interim order was passed in O.S.No.209/2015 nor any final order is passed. The petitioner is not deriving any benefit. The allegation of an offence of forgery cannot be made against him.

3.4. Mr.Sanket M.Yenagi, learned counsel for the petitioner relies upon the decision of the Hon'ble Apex Court in the case of **Surjit Singh and Others v. Balbir Singh**<sup>1</sup> more particularly Para 8 thereof which is reproduced hereunder for easy reference:-

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<sup>1</sup> (1996) 3 SCC 533



**8.** *In Sushil Kumar v. State of Haryana* the question was when a copy of the original document is produced and a private complaint is laid on the basis of a copy of the forged agreement, whether bar of Section 195(1)(b)(ii) gets attracted. This Court had held that until the original document is produced in the court, there is no bar of Section 195 and that, therefore, the private complaint was held not barred.

3.5. The decision of the Hon'ble Apex Court in the case of **Gopalakrishna Menon v. D. Raja Reddy**<sup>2</sup> more particularly Para 5 thereof which is reproduced hereunder for easy reference:-

**5.** *If Section 195(1)(b)(ii) is attracted to the facts of the present case, in the absence of a complaint in writing of the civil court where the alleged forged receipt has been produced, taking of cognizance of the offence would be bad in law and the prosecution being not maintainable, there would be absolutely no justification to harass the appellants by allowing prosecution to have a full dressed trial. Section 195(1)(b)(ii) uses two different expressions: in regard to Section 463 of the Penal Code, 1860 it says, "offence described", while in regard to Sections 471 and 475 or 476 IPC it says, "punishable". The High Court has not made any reference to Section 471 IPC while rejecting the submissions of the appellants apparently because Section 471 in terms has been mentioned in the provision. So far as Section 463 is concerned, the High Court has taken the view as we have already indicated that "Section 463 cannot be construed to include Section 467". Section 463 IPC provides:*

*"463. Forgery.—Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied*

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<sup>2</sup> (1983) 4 SCC 240



*contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*

*It is the opening section of Chapter XVIII of the Penal Code dealing with offences relating to documents and to property marks. This opening section in a sense defines the offence of forgery. Section 467 of the Penal Code provides:*

*"467. Forgery of valuable security, will, etc.—Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

*The purpose of our extracting the two sections of the Penal Code is to show that the offence which is made punishable under Section 467 of the Penal Code is in respect of an offence described in Section 463. Once it is accepted that Section 463 defines forgery and Section 467 punishes forgery of a particular category, the provision in Section 195 (1)(b)(ii) of the Code would immediately be attracted and on the basis that the offence punishable under Section 467 of the Penal Code is an offence described in Section 463, in the absence of a complaint by the Court the prosecution would not be maintainable. We have no doubt in our mind that the High Court took a wrong view of the matter.*

3.6. The decision of this Court in the case of **Smt.**

**Lakshmidevi vs. State of Karnataka**<sup>3</sup> more

particularly Paras 12.32 and 12.33 thereof

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<sup>3</sup> Crl.P.No.5075/2020 dated 24.02.2021



which are reproduced hereunder for easy reference:

12.32 *In view of the above discussion, I answer Point No.3 by holding that in the present case, the aggrieved party is the Complainant whose right in an immovable property is sought to be usurped by the petitioners by allegedly having fabricated or forged the documents. An aggrieved party's right in such a situation to file a complaint cannot be taken away and as such, the complaint filed by the Complainant in the present matter is proper and valid. There is no bar under Section 195 (1)(b)(ii) Cr.P.C. for such prosecution as regards offences committed against such private Complainant, it is, however, made clear that the said complaint cannot relate to the offences committed in a Court.*

12.33 *In view of the discussion above, the Court could also initiate necessary proceedings against the accused for the offence under Section 340 of Cr.P.C. Both the prosecution would be concurrently maintainable, there is no bar under Section 195 (1)(b)(ii) Cr.P.C. for such prosecution and the prosecution for offences under Sections 463, 471, 475 and 476 of IPC cannot amount to double jeopardy.*

3.7. The decision of Co-ordinate Bench of this Court in the case of **Sri. Y.N. Sreenivasa vs. The State of Karnataka**<sup>4</sup> more particularly Paras 21 and 22 thereof which are reproduced hereunder for easy reference:

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<sup>4</sup> W.P.No.15451/2019 dated 14.10.2022



**21 Answer to Point No.2: Whether a private individual said to be affected by any forgery can initiate a criminal complaint for the offences punishable under Sections 419, 420, 468, 471 of IPC?**

21.1 *In view of my answer to Point No.1, it is clear that any person who is affected by any forgery which in this case, the complainants claim to be on account of gift deeds being registered on the basis of a forged katha certificate and tax paid receipts in furtherance of which a sale deed has been executed depriving the complainants of their right in the property, the genesis of the gift deeds and the sale deed being the fabrication of a katha certificate and tax paid receipts irrespective of a suit being filed for declaration of the gift deed and sale deed not being binding on the complainant, a criminal complaint for offences punishable under Section 419, 420, 468 and 471 of IPC would be maintainable.*

21.2 *The reliefs which are sought for in the said suit are for the purposes of cancellation and/or declaration as regards the validity and bindingness of the gift deed and the sale deed, which cannot be granted in a criminal proceeding. The Civil Court cannot punish the accused for criminal offences of forgery, cheating etc. Hence, though both the proceedings arise from the very same action, I am of the considered opinion that both relating to different aspects, both a suit and criminal complaint would be maintainable and any individual who is affected by any forgery or cheating or like can initiate a criminal complaint for such offences.*

**22 Answer to Point No.3: What order?**

22.1 *In view of my finding on Points No.1 and 2, there are no grounds, which are made out by the petitioners for this Court to intercede in the matter. Hence, I pass the following*





**ORDER**

- i. The Writ Petition is dismissed.*
- ii. Liberty is reserved to the petitioners to raise all defences before the trial Court.*

4. Sri.Karan Khivesra, learned counsel for the respondent would submit that;

4.1. It is on the basis of the forged document having been used in O.S.No.209/2015 and the suit having been filed against respondent No.2 – complainant herein, that the complainant was forced to file the complaint. The suit having been filed on 24.11.2015. The complaint was lodged on 7.12.2015 alleging the forgery which has taken place. The suit having been withdrawn only on 14.12.2019 much subsequently the complaint having been filed and cognizance having been taken, the same ought to proceed.



- 4.2. It is because the petitioner made use of the forged document against the complainant, the complainant was constrained to file a complaint. The suit having been filed prior to the complaint on 24.11.2015, the complainant has a *locus* to file the present criminal complaint seeking for initiation of criminal proceedings against him.
- 4.3. The learned counsel for the respondent relies upon the decision of Hon'ble Apex Court in the case of ***Iqbal Singh Marwah and another vs. Meenakshi Marwah and another***<sup>5</sup> more particularly Para 25 thereof which are reproduced hereunder for easy reference:

**25.** *In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis.*

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<sup>5</sup> AIR 2005 SC 2119



4.4. He also relies upon the decision of Hon'ble Apex Court in the case of ***Sachida Nand Singh and Another vs. State of Bihar and Another***<sup>6</sup> more particularly Para 12 thereof which is reproduced hereunder for easy reference:

*12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the court records.*

4.5. He also relies upon the decision of Co-ordinate Bench of this Court in the case of ***Narendra Prasad P. vs. N. Sujatha***<sup>7</sup> more particularly Paras 17 and 20 thereof which are reproduced hereunder for easy reference:

*17. In the case on hand, the Magistrate has not exercised his jurisdiction in entertaining the complaint, instead committed an error in passing the order that the Court cannot take cognizance based on the private complaint. The material on record would disclose that the manipulation and erasing of the same was done outside the Court and not in the Court proceedings and the only allegation is that the said document has been placed before the Court and used the forged document*

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<sup>6</sup> (1998) 2 SCC 493

<sup>7</sup> Crl.RP No.692/2019 dated 11.03.2022



*in the Court proceedings and it is not the case of the complainant that the offence was committed in the Court proceedings. Hence, there is no bar to the learned Magistrate to entertain the complaint and hence, the very approach of the Trial Court is erroneous.*

*20. Having considered the material on record and also the order passed by the learned Magistrate, it is not in dispute that the learned Magistrate has not exercised his jurisdiction by entertaining the complaint and instead, erroneously comes to the conclusion that he is not having jurisdiction to take cognizance based on the private complaint and failed to take note of the allegation made in the complaint in detail while filing the same, wherein specific allegation is made that the forgery of document has taken place outside the Court and not within the Court and only made use of the forged document in the Court proceedings. Hence, the private complaint is maintainable and the Trial Court also lost sight of the factual aspects of the case and therefore, it requires interference of this Court by exercising the revisional powers.*

4.6. Based on the above learned counsel for respondent submit that the above petition is required to be dismissed.

5. Heard Sri.Sanket M.Yenagi, learned counsel for the petitioner and Sri.Karan Khivesra, learned counsel for respondent. Perused papers.

6. Having heard the learned counsel for the petitioner and respondents, the points that would arise for consideration are:

**1. Whether merely because of an allegedly forged document is used in a Court**



proceeding the bar under Section 195 of the Cr.P.C would come into operation or could a complaint be filed by the aggrieved party before the Police Station alleging the fabrication and forgery of documents or could both actions be taken?

2. Whether in the present case, the complainant would have a locus to file a complaint since, the allegation is that a forgery has occurred in respect of site No.6 whereas the complainant is the owner of site No.4?
3. Whether the withdrawal of the suit in OS No.209/2015 by the petitioner which according to the complainant was cause of action for filing the complaint require this Court to quash the criminal proceedings?
4. What orders?

7. I answer the above points as under.

8. **Answer to Point No.1:** Whether merely because of an allegedly forged document is used in a Court proceeding the bar under Section 195 of the Cr.P.C would come into operation or could a complaint be filed by the aggrieved party before the Police Station alleging the fabrication and forgery of documents or could both actions be taken?

8.1. Sri.Sanket M.yenagi., learned counsel for the petitioner has relied upon a decision of the



Hon'ble Apex Court in ***Surjit Singh & other vs. Balbir Singh*** reported in ***(1996) 3 SCC 533***, this decision has been distinguished and set aside by the Hon'ble Apex Court in ***Iqbal Singh Marwah & Another vs. Meenakshi Marwah & Another*** reported in ***(2005) 4 SCC 370***. The Hon'ble Apex Court has categorically distinguished the situation into a forgery having been committed of a document in the custody of the Court and a forged document having been used in a Court of law.

8.2. The Hon'ble Apex Court in ***Iqbal Singh Marwah case*** has come to a conclusion that it is only when a forgery of a document in the custody of Court- i.e., when the document is custodia legis is made that the bar under Section 195 would come into force and it is for the Court to initiate criminal proceedings.

8.3. Insofar as a forgery of a document committed outside the Court but used inside the Court the



Hon'ble Apex Court has come to the conclusion that the bar under Section 195 would not apply. This aspect has also been considered by the Hon'ble Apex Court in ***Bandekar Brothers Private Limited & another vs. Prasad Vassudev Keni & others*** reported in **(2020) 20 SCC 1**, I have also had an occasion to deal with a similar situation in a judgment dated 24.2.2021 in CRL.P.No.5075/2020 and after considering the decision rendered by the various Courts on the above point I have held as under:

**12.7** *In the above background, when the document has been used outside the Court, it cannot be said that Section 195 of Cr.PC would come into play. As held by the Hon'ble Apex Court in **Narendra Srinivastva's** case supra, Section 195 would come into play only if the documents had been fabricated or otherwise when the document is in the custody of the Court, i.e., custodia legis since in that eventuality the crime having been committed within the Court, the Court would be required to initiate the complaint. The said decision can, however, only apply to fabrication and or forgery of a document in the Court's custody and not as regards false or fabricated evidence submitted.*



- 12.8** *In the present case, crime is actually alleged to have been committed prior to the documents being used in a Court of law, be it a Revenue Court. Since the documents have been fabricated outside the Court when they were no Court proceedings going on between the parties.*
- 12.9** *The situation could have been different if the documents had been fabricated outside the Court only for the purpose of usage in Court proceedings, which are pending.*
- 12.10** *Thus, there are four instances that would arise for the purpose of consideration:*
- 12.10.1** *A document that is forged or fabricated and has not been used in a court proceeding;*
- 12.10.2** *A document has been fabricated for the exclusive purpose of usage in a court proceeding that is pending;*
- 12.10.3** *A document in the custody of the Court is tampered with so as to change the contents, thereby forging the said document.*
- 12.10.4** *A document that is forged or fabricated outside the Court but subsequently used in Court proceedings.*
- 12.11** *In the first case, when a document is fabricated or forged and has not been used in a court proceeding, it cannot be said that Section 195 would be applicable.*
- 12.12** *In the second case, if a document has been fabricated for the purposes of usage in a Court and thereafter, used in a Court and not elsewhere, then Section 195 of Cr.P.C. would come into play as against the private Complainant. In such a situation, it is only the Court which could initiate the proceedings against the offender.*





**12.13** *In the third case, if a document is tampered with and/or fabricated while in the custody of the Court, then, it would be the Court alone, which could have to be the Complainant and Section 195 would come into play.*

**12.14** *In the fourth case, as held in the first case scenario, if the document has been fabricated and not used in a Court proceeding, then the aggrieved party can always file a criminal complaint, and the same could be proceeded with by the jurisdictional police. The situation gets complicated when after the fabrication, the same is used in a Court proceedings. What would be the remedy of the aggrieved party or rather who is the aggrieved party, is Court also an aggrieved party. Though it can be said that it is the person against whom the offence has been committed both outside Court and inside the Court who is the aggrieved party, if the offence is committed inside the Court, the Court could also be said to be an aggrieved party on behalf of the society at large since the same interferes with the course of justice, is an abuse of the process of law and violates rule of law, all of which the Court is duty bound to protect and preserve. In such a situation:*

**12.14.1** *If a complaint had been filed prior to usage of the document in a Court, a private complaint would be maintainable.*

**12.14.2** *In the event of the said document being used in a Court, the Court in order to preserve and maintain the majesty of law and prevent the abuse of process of Court as also to take action against such litigants, the Court could resort to initiation of proceedings in terms of Section 195 after holding an enquiry as required under Section 340 of Cr.P.C.*

**12.14.3** *The question then would be*

**12.14.3.1** *If a complaint had been filed prior to usage of such a document in the Court and*



*subsequently used in a Court and the Court were also required to take action.*

**12.14.3.2** *If a complaint had been filed by the aggrieved person after the usage of the document in Court and the Court were also required to take action.*

**12.14.4** *Could both the actions be permissible or would the complaint filed by the aggrieved party before the police have to be quashed pending decision of the Court.*

**12.15** *Having considered all situations as stated above, I am of the considered opinion that the offences which have been committed are distinct in nature.*

**12.16** *The distinct statutory provisions give rise to separate offences and are therefore required to be treated distinctly, each of those offences are required to be proved by proving the necessary and applicable ingredients thereto.*

**12.17** *Though Shri. Aravind Kamath Learned senior counsel has sought to contend that the Petitioners cannot be prosecuted twice, I am of the concerned opinion that since there are two distinct offences involved, the principles of double jeopardy would not be attracted.*

**12.18** *Double jeopardy would be attracted only if the ingredients of both the offences are one of the same, the aggrieved party is one and the same and the facts and offence are one and the same.*

**12.19** *The same set of facts can always constitute different offences under different statutes. In the present case as discussed earlier, the offence of fabrication or forgery of a family tree and death certificate, the offence of impersonation and the offence of cheating are alleged to have been committed on the Complainant, which are offences under the Indian Penal Code. As regards which, the aggrieved party like the Complainant*



*would always have a recourse to initiate/lodge a complaint before the jurisdictional police.*

- 12.20** *Section 195 of Cr.P.C. is completely a different enactment and relates to the procedural aspects. Section 195(1)(b)(i) Cr.P.C. relates to offences under Sections 193 to 196, 199, 200, 205 to 211 and 228 of IPC, which in turn relate to false evidence before the Court. The said offences would have to be committed in relation to a proceeding in any Court of law. Thus, if the offences is committed outside the Court, Section 195 (1)(b)(i) of Cr.P.C. would not be attracted.*
- 12.21** *Section 195 (1)(b)(ii) relates to offences under Sections 463, 471, 475 and 476 of IPC and the bar is imposed on the Court to take cognisance when such offences are alleged to have been "committed in respect of the document produced or given in evidence in a proceeding in any Court". The same does not cover Section 420 viz., cheating nor does it cover impersonation which are alleged to have been committed by the petitioners. Thus, on this ground itself, it can be said that the bar under Section 195 (1)(b)(ii) Cr.P.C. would not be attracted to the present case. At most, the same could come into play only as regards offences under Sections 463, 471, 475 and 476 of IPC.*
- 12.22** *Be that as it may, even as regards offences under Section 463 of IPC viz., forgery, Section 471 of IPC viz., using of forged documents, the bar would be attracted only if the offences alleged to have been committed is in respect of a document produced or given in evidence in a proceeding in any Court. The usage of the words would imply that the said offence under Sections 463 or 471 of IPC should have been committed in respect of a document produced or given in evidence. The same does not relate to any offence prior to the production before the Court or prior to evidence being given before the Court.*
- 12.23** *This again is a distinct offence which can be said to be committed only upon the document having*



*been produced in Court or after evidence is given. In such case, though the person against whom this document is used and/or evidence is given would be the aggrieved party, the Court could also be an aggrieved party since the provision of Section 195 Cr.P.C. has been included in the Cr. P.C. so as to enable the Court to implement Rule of Law, maintain and preserve the purity of justice system and not be polluted by such litigants.*

**12.24** *Therefore, the Court whenever faced with the situation of any document being forged and/or false evidence being given, it is for the Court to exercise its jurisdiction and initiate action against such offenders by following the procedure under Sections 195 and 340 of Cr.P.C. so as to stop the pollution of the pious stream of justice.*

**12.25** *It is for this reason also that I am of the considered opinion that the offences under Sections 463 and 471 committed outside Court stand on a different footing than that committed inside the Court. Once a forged document is used in a Court or any offence under Sections 463, 471, 475 and 476 of IPC is committed in the Court, the Court has no option but to initiate action against such an offender by following the due procedure applicable thereto, while as regards the offence committed outside Court the aggrieved party would be free to exercise his/her choice as to prosecute or not.*

**12.26** *The fabrication of a document or impersonation, forgery or the like would continue to be an offence under Indian Penal Code for an aggrieved private party to take such action as may be required. The usage of the said document or furnishing of false evidence in a Court is distinct inasmuch as though the private party would be aggrieved, the Court would also be aggrieved since, as observed above, the Court has to maintain the majesty of the Court and to see to it that there is no abuse of the process of Court.*



- 12.27** *In such an event, I am of the considered opinion that the Court would have to initiate necessary proceedings for such offences which are committed before it.*
- 12.28** *The offences being distinct though the document is the same, I am of the considered opinion that the same would not amount to double jeopardy since after committing the offence of fabrication, forgery, etc., the said fabricator or forger has used the said document in a Court to obtain favourable orders. The second aspect at the cost of repetition I again would hold to be a distinct and separate offence.*
- 12.29** *The above also being for the reason that under Section 195, the Court had been given a power to file a complaint since the majesty of the Court being affected and/or the Court process being abused by which the Court on behalf of the society at large would be aggrieved and the Court could be the Complainant, the Court in such a situation would be aggrieved on behalf of the society at large, so as to preserve and protect the Rule of Law.*
- 12.30** *Whereas in other cases where a document is fabricated or forged so as to usurp the property, defame a person, cheat a person or like, the dispute is inter se between the person who is said to have committed the offence and the person against whom the offence is sought to be committed. Therefore, it is for the person against whom the offence is committed or sought to be committed to file a complaint against such a person who seeks to commit the offence or has committed the offence. In such a situation, merely because the document is subsequently used in Court of law, it cannot deprive a right of the aggrieved person or a victim of the said forgery to file a complaint and the same cannot be taken away merely because the forged document has been used in a Court of law.*



**12.31** *As aforesaid, the distinction that is required to be drawn to invoke the bar under Section 195 of Cr.P.C. is that primarily the Court is to be the aggrieved party requiring the Court to initiate criminal proceedings. If the aggrieved party is a third party private citizen then the third party private citizen would essentially have a right to file a complaint either in a police station or a private complaint before the Court of law under Section 200 of Cr. P.C, which right cannot be taken away. A private party cannot file a complaint before the police for abuse of process of law, giving false evidence before a court of law or using forged documents in a court, that would have to be done only by a court.*

8.4. Hence, I answer point No.1 by holding that an aggrieved party against whom if forged or fabricated document is made use of in a Court of law would have a right to file a criminal complaint as regards such forgery and fabrication the bar under Section 195 (1)(b)(ii) of the Cr.P.C., does not apply.

8.5. The Court before which forged document is produced could also take action against such a person under Section 340 of the Cr.P.C., both the prosecution by the private party under regular criminal law and the prosecution by the Court would not amount to double jeopardy.



**9. Answer to Point No.2: Whether in the present case, the complainant would have a locus to file a complaint since, the allegation is that a forgery has occurred in respect of site No.6 whereas the complainant is the owner of site No.4?**

9.1. The contention of Sri.Sanket M.Yenagi., learned counsel for the petitioner is that the allegation made in the complaint is that there is fabrication or forgery in respect of site No.6. Hence, it is contended that the complainant who is the owner of the site No.4 would not have a locus to file a criminal complaint. Whereas the contention Sri.Karan Khivesra., learned counsel for respondent is that by making use of the forged allotment sheet and documents the petitioner had filed suit in OS No.209/2015 against the respondent.

9.2. The forgery having allegedly occurred and immediately thereafter a suit having been filed by the petitioner on 24.11.2015, respondent lodged a complaint on 7.12.2015, since this



document was sought to use against respondent. The fact that the petitioner had filed a suit using said forged document against respondent would be categorically, on its own, establish the locus of respondent to file a complaint, since suit was filed against respondent.

9.3. There is substance in the submission of Sri.Karan Khivesra in as much as from an examination of the dates and events it is categorical that the petitioner had filed a suit against respondent and the basis of the said suit was the alleged forged document/s. Whether there is forgery in respect of site No.6 or site No.4 the fact remains that a suit was filed by the petitioner against the respondent and reliefs have been sought for against the respondent and the property in question. Such being the case, the reliefs having been sought for on the basis of the alleged forged





documents it cannot be said with the person against the whom such reliefs are sought for has no locus.

9.4. Respondent against whom said document is used can always complain about and seek for action being taken as regards a document which has been forged or fabricated.

9.5. Thus, I answer point No.2 by holding that respondent would have locus to file a complaint against the petitioner, as regards the forgery of the documents which was used against respondent.

10. **Answer to Point No.3: Whether the withdrawal of the suit in OS No.209/2015 by the petitioner which according to the complainant was cause of action for filing the complaint require this Court to quash the criminal proceedings?**

10.1. The contention of Sri.Sanket M.Yenagi., learned counsel for the petitioner is that the suit having been filed on 24.11.2015, complaint was lodged on 7.12.2015, the suit has been withdrawn on



14.12.2015 and as such the basis on which the complaint was filed being the suit no longer being in existence, the above petition would have to be allowed.

10.2. There being serious allegations made against the petitioner as regards the forgery of documents and the use of such forged documents against respondent. The dates as afore detailed would have to be considered in the proper prosecutive. Documents having been forged, a suit was filed on 24.11.2014, service having been affected in the suit, the respondent filed a complaint on 7.12.2015, thereafter the petitioner filed a present petition on 11.12.2017. Finally, after obtaining order of stay in the present proceedings on 14.12.2019 the suit came to be withdrawn.

10.3. Merely because the suit was withdrawn would not take away the fact of forgery or use of forged document against the respondent. This aspect would have to be dealt with by the trial Court and



the necessary finding to be given in relation thereto. The fact however remains that the suit was withdrawn nearly four years after the filing of the complaint. Thus, even for the said four years the petitioner continued to keep complaint pending, despite having filed the above petition in the year 2017.

10.4. Thus, now it is cannot be heard to say that the respondent has no locus and/or because petitioner has withdrawn the suit the above petition is required to be allowed and objection on part of the respondent be rejected.

10.5. The sequence of events as aforestated would lead to the only conclusion that a forged document has been used against respondent, respondent is well within his rights for initiating action against such forged document having been used.

10.6. Hence, I answer point No.3 by holding that the withdrawal of the suit in OS No.209/2015 filed by the petitioner which



formed the cause of action for filing the complaint would not automatically result in the quashing of the criminal proceedings.

**11. Answer to Point No.4: What order?**

No ground having been made out, the petition stands ***dismissed***.

**Sd/-  
JUDGE**

SR  
List No.: 1 SI No.: 30