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PARMINDER KAUR

v.

STATE OF U.P.

(Criminal Appeal No. 1941 of 2009)

OCTOBER 26, 2009

B

[TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ.]

C

Code of Criminal Procedure, 1973: s.482 – FIR lodged u/ss.420/467/468/471 IPC against sister in law – Allegation that she committed forgery by filing false affidavit wherein dates were altered – Petition u/s.482 before High Court, dismissed – On appeal, held: Manner in which litigation was fought shows that the criminal prosecution was started to wreak vengeance – Trial court took cognizance of non existent

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offence mechanically – Complainant was not able to show that appellant could be benefitted in any manner by changing the dates – Change could not and did not result in any illegal gains to appellant or illegal loss to anybody – Such changes were therefore innocuous and did not give rise to offence –

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This was a case for malicious prosecution – Prosecution was abuse of process of law – Prosecution case quashed.

State of Haryana v. Bhajan Lal (1992) Supp. 1 SCC 335, relied on.

F

Bharat Parekh v. Central Bureau of Investigation (2008) 10 SCC 109, distinguished.

K. Rama Krishna and Ors. v. State of Bihar and Anr. AIR 2000 SC 3330, referred to.

G

Case Law Reference:

AIR 2000 SC 3330

referred to

Para 11

(2008) 10 SCC 109

distinguished

Para 19

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(1992) Supp. 1 SCC 335 relied on

Para 20

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1941 of 2009.

From the Judgment & Order dated 3.8.2007 of the High
Court of Judicature at Allahabad in Crl. Misc. Application No.
10377 of 2004.

B

V.B. Singh, Ratnakar Das, Gurbaksh Singh, Avtar Singh,
Abhijat P. Medh, Abha, R. Sharma, D.S. Parmar, Susheel
Tomar, R.K. Gupta, Rajiv Kumar Dubey, Kamendra Mishra for
the appearing parties.

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The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. Leave granted.

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2. This appeal is filed challenging the order of the High
Court, whereby, the High Court has dismissed an application
filed by the appellant herein under Section 482 of the Criminal
Procedure Code (hereinafter called "Cr.P.C." for short) for
quashing the proceedings arising out of charge sheet of case
No. 3045 of 2004 under Sections 420/467/468/471 of the
Indian Penal Code (hereinafter called "IPC" for short), pending
in the Court of Chief Judicial Magistrate, Rampur.

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3. This prosecution was initiated on the basis of the First
Information Report (FIR) dated 27.2.2004 lodged by one
Hargursharan Singh (complainant) against the appellant herein,
alleging the offences under aforementioned Sections. As per
the said complaint, by respondent no.2 one Amrinder Kaur and
her husband Col. Hargobind Singh owned agricultural property,
bearing Khata Nos. 40 and 2. They were unable to look after
the property and, therefore, appointed Hargursharan Singh,
respondent No. 2 herein (the real brother of Col. Hargobind
Singh), as their general attorney. Respondent No. 2 herein, by
virtue of general power of attorney, sold the aforementioned

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A land and delivered possession to the purchasers. He described
 appellant-Parminder Kaur as a stranger. Two Civil Suits came
 to be filed by the appellant, Parminder Kaur, claiming to be
 holding Power of Attorney for Amrinder Kaur, against the
 purchasers. They were Civil Suit Nos. 266 of 2002 and 267 of
 B 2002. In those Civil Suits, she prayed for the cancellation of the
 Sale Deeds. According to the prosecution, while instituting
 these suits on 27.5.2002, the appellant had filed a false affidavit
 that she had come to know regarding the Sale Deed only on
 16.5.2002 and had obtained a certified copy of Revenue
 C Record on 27.5.2002. According to the complainant, in fact, the
 appellant had actually moved for the certified copy of Khatauni
 on 6.5.2002 and had already received the copy on 7.5.2002.
 On that allegation, it was contended in the FIR that she had
 committed the offences as alleged. The High Court took the
 D view that the FIR, as well as, the material collected by the
 prosecution were good enough at least to proceed and it could
 not be said that no offence was disclosed from the same. It is
 this judgment of the High Court, which is challenged before us.

4. We have seen the FIR closely, on the basis of which the
 E offences were registered. This report has been authored by
 respondent No. 2 Hargursharan Singh S/o Shri Gurbaksh
 Singh. It has been stated in this report that he held a power of
 attorney on behalf of one Col. Hargobind Singh and "Amrinder
 Kaur" and on that basis, he sold the land of Amrinder Kaur to
 F one Col. Sarabjeet Singh S/o Avtar Singh and Namrata Chandi
 D/o Hargursharan Singh (i.e. the daughter of the complainant).
 It was pointed out that the registration was effected in the same
 year. Similarly, he had sold one other land of Col. Hargobind
 Singh to one Prabhjyot Singh S/o Teja Singh and Balbir Singh
 G S/o Gurjit Singh. He also claimed that some other land out of
 the total land was also sold to one Manjeet Singh S/o Jagir
 Singh and Balbir Singh S/o Gurjit Singh. It was further asserted
 that the lands were in cultivation of the vendees. One "unrelated
 lady" Parminder Kaur W/o Col. Hargobind Singh, R/o Village
 H Behait, Distt. Rampur, who had no right in the said land, had

filed two Civil Suits, being Civil Suit Nos. 266 of 2002 and 267 of 2002 against Hargursharan Singh (the complainant) and also filed Civil Suit No. 268 of 2002 against Prabhjyot Singh in the Court of Civil Judge, Rampur. It was claimed that said suits were pending disposal. It was further claimed that the suits were filed by Parminder Kaur (appellant herein) and she supported the same with a false affidavit, in which she stated that she learnt about the sale of agricultural land on 16.5.2002 and immediately, she applied for the certified copy of the Revenue records, which were made available to her on 27.5.2002 and without any delay, she filed the present suit. It was pointed out further that Parminder Kaur (appellant herein) had already applied for certified copy of Revenue Records on 6.5.2002 and the same was made available to her on 7.5.2002. However, to overcome the limitation, she altered the date from 6.5.2002 to 16.5.2002 and 7.5.2002 to 17.5.2002 and 27.5.2002. It was further claimed in the said report that Parminder Kaur had filed Civil Suit No. 267 of 2002 in the capacity of power of attorney on behalf of "Amrinder Hargobind Singh" and in fact, she had no concern with the land in question. It was further pointed out that the real owners of the land had not objected to the sale of land and the sale was being objected to by Parminder Kaur, who was an "unrelated woman" and she had no right to interfere. It was then claimed that Parminder Kaur, in order to cause loss to the complainant, interpolated the dates of Revenue Records and, therefore, the documents were forged and the same were produced in the Court in order to defraud the Court and a false affidavit had been sworn in the Court and she was liable to be punished for the same. With the FIR, the affidavit dated 27.5.2002 sworn by Parminder Kaur in Suit Nos. 266 of 2002 and 268 of 2002 were filed alongwith other documents like Duplicate Khata No. 40, Duplicate Khatoni No. 40, Duplicate Khatoni Khata No. 2, Search Certificate dated 11.6.2002 of Office Asstt. Manager, Bilaspur, reply dated 10.6.2002 and 26.9.2002 and Form No. 148 dated 6.5.2005 given to one Surender Kumar by Tehsildar for certified

A copy. It is on this basis that the offence was registered, investigated into and the chargesheet was filed against the present appellant Parminder Kaur.

5. The present appellant Parminder Kaur is 74 years old lady. It is claimed in the Special Leave Petition that the present appellant, in fact is the wife of Col. Hargobind Singh and is having indifferent health. It is claimed that Parmindar Kaur is none else, but the complainant's brother's wife and it was she who had filed the three aforementioned suits, being Civil Suit Nos. 266 of 2002, 267 of 2002 and 268 of 2002 on 27.5.2002. It is pointed out in the Special Leave Petition that she had, in fact, applied for the certified copy of the Revenue Records and it was she who prosecuted the suits in her capacity as the wife of Col. Hargobind Singh. She also clarified that she had applied for the Revenue Records on 16.5.2002 and the same were made available to her on 27.5.2002 and she had given certified copies to her counsel Shri O.P. Gupta. Further she has pointed out that earlier the power of attorney was executed by husband of appellant, Col. Hargobind Singh in favour of the complainant/respondent No. 2 on 3.7.1970 with regard to the land in question, however, it was revoked on 29.7.1975. She then pointed out that her daughter Amrinder Kaur executed a power of attorney with regard to her land on 27.3.1991 and revoked the same in April, 1991. The further claim is that after the certified copies of Revenue Records were given to her counsel Shri O.P. Gupta, she was asked at that time to put signatures on 40 blank papers. Her contention is that she had nothing to gain by altering the date on the certified copies by adding "1", i.e., making "16" instead of "6" and "17" instead of "7". She further alleged that at the instance of Shri O.P. Gupta, she was dubbed as a hardened criminal and two criminal cases were registered against her. She also points out that she was taken to Rampur from Chandigarh and she was dumped in a dark cell and she remained in the custody for about a week and was granted bail only by the District Judge, Rampur. Her contention is that all these were the schemes conceived by the

respondent No. 2 to anyhow put her behind the bars. She points out that in one of the matters, respondent No. 2 Hargursharan Singh has claimed to be the owner on the basis of adverse possession of a land owned by her. She further points out that a mere look at the documents in Civil Suit could show that she was never in Rampur on 27.5.2002 when the plaint was supposed to have been filed.

6. We have seen the papers filed alongwith the Special Leave Petition, viz., Annexure P-3 on Page 42 of the Special Leave Petition's Paper Book, wherein the date for submission of application has been shown to be 6.5.2002 and the date of delivery has been shown to be 7.5.2002. On the first page of the document, it is shown that the land of Col. Hargobind Singh S/o Gurbaksh Singh was transferred in the name of Manjeet Singh S/o Jagir Singh and Balbir Singh S/o Gurjit Singh on the basis of Sale Deed for Rs.2,78,000/-. On the second page of the Annexure, it is shown that the land of Col. Hargobind Singh stood transferred in the name of Prabhjyot Singh vide Sale Deed for Rs.4,60,000.

7. We have also seen the plaint in Civil Suit No. 266 of 2002. The plaintiff is described as "Col. Hargobind Singh, Major S/o Shri Gurbaksh Singh R/o Village Behait, Tehsil Bilaspur, Distt. Rampur (U.P.) through attorney *Smt. Parminder Kaur* W/o Col. Hargobind Singh R/o Village Behait Tehsil Bilaspur, Distt. Rampur (U.P.)". In Para 1 also, Parminder Kaur has described herself as the wife of Col. Hargobind Singh and it is asserted that the suit was being filed on behalf of Col. Hargobind Singh in the capacity of his attorney. Paras 2 and 3 of the plaint gives the description of the various lands held by Col. Hargobind Singh. In Para 4, it is pointed out that Hargursharan Singh was appointed as attorney vide power of attorney dated 3.4.1970. Para 5 of the plaint suggests the revocation of the power of attorney and the intimation thereof to the concerned authorities like Sub-Divisional Magistrate, Bilaspur and the respondent No. 2 etc. In Para 6, it is pointed

A out that Sardar Hargursharan Singh executed a forged and fabricated Sale Deed with regard to the land comprising in Gatha No. 1/15 M. area 5.36 acres in favour of defendant Nos. 2 and 3, i.e., Manjeet Singh and Balbir Singh respectively, without any right or authority posing himself as a general attorney of Col. Hargobind Singh and got the same registered, B whereas on that day, he had no such right or authority for executing a Sale Deed. On that day, i.e. on 10.1.1996, he was not a general power of attorney holder at all. It was pointed out that the mutation was also got done by the respondent No. 2 C herein. In the plaint, it is suggested in Para 8 that plaintiff (Parminder Kaur) came to know about the cheating through the Record Keeper for the first time on 16.5.2002, when she asked for the copy of Khatoni. Para further goes on to say that:

D "plaintiff got inspected the Revenue Records in the Office of Registrar, Kannungo, Bilaspur and on the same day, filled up the Form for getting certified copies of the copy of the Khatoni and today dated 27.5.2002 after getting the copy of the Khatoni, is filing the present suit without any delay."

E Again in Para 10, it is suggested that for the first time the cause of action arose on 16.5.2002 due to the execution of forged and void Sale Deed by Manjeet Singh (defendant No. 1 therein) without any right or authority. The plaint is shown to be filed on F 27.5.2002. There is a verification also on that date. There is then an affidavit on record, again signed by Parminder Kaur, aged about 65 years, W/o Col. Hargobind Singh, R/o Village Behait, Tehsil Bilaspur, Distt. Rampur, U.P., where all the contentions raised in the plaint are reiterated. We have seen the original affidavits also, which are in the name of Parminder G Kaur. Similar such affidavits are to be seen alongwith the Special Leave Petition.

8. In so far as C.S.No.267 of 2002 is concerned, the same was filed by the appellant on behalf of her daughter Amrinder H Kaur for whom she was holding power of attorney dated

4.2.2002. Therein she sought setting side of the sale deed dated 3.7.1991 effected by the respondent no.2 herein on the ground that the respondent no.2 had no authority to effect the sale of the land of Amrinder Kaur. The power of attorney dated 27.3.1991 effected by Amrinder Kaur was already cancelled before the date of sale. In that suit also she claimed that she had came to know of the fraudulent sale on 16.5.2002 when she inspected the revenue record which suggested that the concerned land was no more recorded in the name of Amrinder Kaur. Further the appellant filed a suit bearing C.S. No.268 of 2002 against Prabhjyot Singh on the same lines.

9. The respondent no.2 also initiated one more criminal matter in which he asserted before the court regarding the same land that he was in adverse possession of the land in respect of which the civil suits were filed by the appellant herein. Besides these civil suits, she has also filed proceedings before the Revenue authorities for the change of revenue entries in her favour. It may be noticed that those revenue entries in respect of the lands stood in favour of the vendees whose vendor was none else but the respondent no.2. Ultimately the appellant did not succeed in those proceedings and hence she seems to have filed the aforementioned civil suits.

10. On the basis of the aforementioned so-called forgeries a First Information Report bearing No.32 of 2004 vide Crime No.75 of 2004 was registered against the appellant. It seems that in another Crime No.390 of 2003 pending in the Court of CJM, Rampur, she had filed an exemption application praying for exemption from personal appearance which was granted while exemption application filed before the Bilaspur Court was declined. Her Transfer Petitions were also dismissed and those orders were maintained right upto this Court.

11. The appellant then approached the High Court of Allahabad by way of a petition under Section 482 Cr.P.C. for quashing the proceedings arising out of the charge-sheet of Case No.3045 of 2004 for the offence under Sections 420/467/

- A 468/471 IPC. We have already given the details of the First Information Report dated 27.2.2004 on the basis of which the
 B aforementioned prosecution had commenced. The Allahabad High Court, however, declined to interfere, relying on the
 C judgment of this Court in *K. Rama Krishna & Ors. vs. State of Bihar & Anr* [AIR 2000 SC 3330]. The High Court expressed
 D that it would be ordinarily reluctant to interfere in the proceedings at the interlocutory stage. The High Court also went on to record that in the instant case there was no legal bar against the continuance of criminal proceedings in respect of alleged offence and it was not the case where the allegations in the First Information Report even if are taken on the face value did not constitute the offence alleged nor could it be said that even without appreciating the evidence and merely by looking at the complaint or the FIR or the accompanying documents, the offence alleged was not disclosed. It is this verdict of the High Court which is challenged before us.

12. We must note, at this juncture, that the respondent no.2 has filed a huge counter affidavit to the petition filed by the appellant wherein every possible document has been filed
 E including all the documents in the earlier Transfer Petitions, the Revenue proceedings as also the pending criminal proceedings. Based on the assertion of the counter, his basic plea is that he was holding a valid power of attorney for the appellant and it was on the basis of that power that he sold the
 F lands and had also given all the considerations to his brother Col. Hargobind Singh and the appellant. He also admits that he sold the land belonging to their daughter Amarinder Kaur. However, before the criminal court he asserted that he was in possession of the land right from 1954 or somewhere thereafter
 G and hence had become owner by way of adverse possession. It is quite interesting to note his aforementioned stand which he has given on oath before the criminal court which has been brought to our notice and which is not denied by the respondent no.2. However, this is neither the occasion nor the proper stage
 H to consider the merits or de-merits of the said plea. All that we

are concerned with is, whether the appellant could be said to have committed the offence of forgery, cheating, etc., which are being alleged against her on the basis of which she is facing the prosecution. We have, therefore, heard the parties extensively in this regard.

13. We find that the huge counter affidavit of about 346 pages is of no use as it merely relates to the pending litigation between the parties. However, one thing is very certain therefrom that the appellant on the one hand and the respondent no.2 on the other hand are bitterly fighting civil litigations which are pending before the Rampur Courts. These litigations started from the year 2002 firstly in revenue Courts and then with the filing of three Civil Suits about which we have already mentioned above. The concerned FIR appears to have been filed on 27.2.2004, i.e., when the civil litigations, i.e., CS No.266 of 2002, CS 267 of 2002 and CS 268 of 2002 were pending. The very fact that the criminal proceedings were initiated by the respondent no.2 who was none else but the real brother-in-law (husband's real younger brother) against his sister-in-law whom he described as an "unrelated person", the appellant herein, who is about 75 years of age speaks volumes in so far as propriety of such criminal prosecutions is concerned. It is absolutely clear from the manner in which the litigation is being fought that it is nothing but to wreak vengeance that the criminal prosecution has been started. We particularly find the total absence of bona fides on the part of the respondent no.2 to file the First Information Report which we have quoted above. We also are at a loss to understand as to what offence has been committed by the appellant herein and how could the court take cognizance of the FIR filed by the Bilaspur Police Station. This is a classic example where the concerned Investigating Officer of the Bilaspur Police Station has totally subverted the investigation system and started the prosecution of an old lady. We are also surprised that the said old lady was arrested and had to stay behind the bars for more than a week which fact is not disputed by even the counsel for the State of

- A U.P. We also fail to understand as to how the trial court took cognizance of a non-existent offence mechanically.

- B 14. The only allegation which appears from the First Information Report is that the appellant altered the date from "6.5.2002" to "16.5.2002" and "7.5.2002" to "17.5.2002" and "27.5.2002". It seems from the certified copy that though she had applied for the certified copies of the revenue records on 6.5.2002 and the same were made available to her on 7.5.2002, she altered those dates in the copies filed by her in the court to "16.5.2002" and "17.5.2002" as also "27.5.2002".
- C This is all the forgery which has been complained of by the respondent no.2 in the aforementioned FIR. It is only on this basis that it is suggested that the said civil suits were filed on 27.5.2002 and a false affidavit was sworn by the appellant. It is pointed out that in that affidavit also she had given the wrong
- D dates. The only basis for this allegation is in the following words:

- E "This interpolation of dates is apparent because from 15.5.2002 to 30.5.02 no one inspected the records of Khata No.40 of Village Beehat. That in the letter dated 26.9.02 it has been made clear that the certified copy with regard to Khata No.40 situated in village Beehat Khatoni 1.4.02 to 1.4.07 was got ready on 7.5.02 itself."

It is then contended that:

- F "Smt. Parminder Kaur in order to *cause loss* to the applicant interpolated the dates of revenue records and thus the documents are *forged* and the same were produced in the court in order to *defraud the court* and false affidavit has been filed in the court which is a
- G crime..."

(emphasis supplied)

- H We specifically put a query to Shri Das, learned Senior Advocate appearing on behalf of the State of U.P. as also to

the learned senior counsel for respondent no.2 to show us as to what advantage would the appellant be put to by changing the dates from "6" to "16" and "7" to "17" or as the case may be "27" and how loss would be caused to the respondent no.2. Learned counsel were not able to answer the question. At one point of time in the innumerable affidavits which were filed before us and as also in the written submissions on behalf of the respondent no.2 it is asserted that this has been done by the appellant to save the limitation. We again asked the learned counsel as to how the limitation could be saved by adding "1" before the figure "6.5.2002" and "7.5.2002" to which the learned counsel had no answer and indeed they could not have any such answer. The case of the appellant throughout appears to be that she did not do it. Firstly, she contends that she did not file the civil suit on 27.5.2002 because she was not present at the time of filing of the civil suit on 27.5.2002 and that the civil suits appear to have been filed through her counsel Shri O.P. Gupta. She had made very serious allegations against Shri Gupta. We will not go into those allegations as we are not called upon to do so nor do we find it necessary to do so. However, the fact remains that even if we presume that somebody interpolated the records by adding the figure "1" and even if it is presumed that the appellant did so, still it does not become a forged document.

15. The first Section of the IPC alleged against the appellant is Section 420 and we are at a complete loss to understand as to how the offence could even be alleged against the appellant on the basis of the so-called forgery. Therefore, that Section is out of question. Forgery is defined under Section 463 IPC which reads as under:

"463. Forgery – Whoever makes any false documents or false electronic record or part of a document or electronic record, 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

- A express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

- We do not find as to how the change brought in by adding figure “1” could cause damage or injury to public or anybody or how it could support the claim or title or how it could cause any person to part with property or for that matter how there could be any intention to commit fraud.
- B

16. The second Section alleged is Section 467 IPC which reads as under:

- C “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 delivery 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.”
- D
- E

- A mere look at the section would suggest that even this offence could not be alleged against the appellant.
- F

17. The next Section is Section 468 IPC which reads as under:

- G “468. *Forgery for purpose of cheating* – Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”
- H

This is the aggravated form of forgery which is punishable under Section 465 and is defined under Section 464 IPC. Section 464 speaks of making a false document. The Section reads as under:

"464. Making a false document. A person is said to make a false document or false electronic record –

First. – Who dishonestly or fraudulently –

- (a) makes, signs, seals or executes a document or part of a document;
- (b) makes or transmits any electronic record or part of any electronic record;
- (c) affixes any digital signature on any electronic record;
- (d) makes any mark denoting the execution of a document or the authenticity of the digital signature.

With the intention of causing it to be believed that such document, or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly. – Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration, or

Thirdly – who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic

A record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.”

B The first clause suggests that person makes a false document if he –

(1) dishonestly or fraudulently makes, signs, seals or executes a document, or part of a document, or makes any mark denoting the execution of a document; and

C (2) does as above with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed,

D (a) by or by the authority of a person by whom or by whose authority it was not so made, signed, sealed or executed, or

(b) at a time at which he knows that it was not made, signed, sealed or executed;

E It is not the case here. To attract the second clause of Section 464 there has to be alteration of document dishonestly and fraudulently. So in order to attract the clause “secondly” if the document is to be altered it has to be for some gain or with such objective on the part of the accused. Merely changing a document does not make it a false document. Therefore, presuming that the figure “1” was added as was done in this case, it cannot be said that the document became false for the simple reason that the appellant had nothing to gain from the same. She was not going to save the bar of limitation.

G 18. The last offence which is alleged against the appellant is Section 471 IPC. This section is not applicable in the case of the appellant for the simple reason that we have already

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found that there was no dishonest intention on the part of the appellant nor had she acted fraudulently. This Section applies only in case of the use of a forged document as a genuine document. Since we have found that there is no element of forgery at all, there would be no question of there being any valid allegation against the appellant.

19. We are surprised at the manner in which the investigation was done and the manner in which the cognizance was taken by the courts below. In its written submissions also the State has merely justified that the figure of "1" was added in order to show that there was no latches or negligence for filing civil suits. We do not understand as to how 10 days could have amounted to latches or negligence because ultimately the suits seem to have been filed after 10 days. The State has also relied upon the reported decision in *Bharat Parekh vs. Central Bureau of Investigation* [(2008) 10 SCC 109] and has justified that all this can be considered at the time of framing of charges. We are surprised at the attitude of the State when it is apparent on the record that the whole prosecution is malafide, malicious and vengeanceful only to settle the scores of respondent no.2 against the appellant. A little effort has been made by the State to rely on the dismissal of the earlier Transfer Petitions. We have seen the judgment of this Court whereby the Transfer Petitions were dismissed. There is absolutely no relevance of that judgment to the present controversy. There, this Court was not called upon to decide as to whether the FIR and the other material did suggest any commission of offence by the appellant. This Court simply went on the convenience of the parties to reject the transfer petition. In fact during the debate when we put specific questions as to what advantage would the appellant get by aforementioned so-called forgery, the learned counsel for State was unable to answer. The same was the case with the learned Senior Counsel who appeared for respondent no.2. He was also unable to justify the same. All through we found that the respondent no.2 was more keen than necessary and even after the arguments were over, the

A respondent no.2 has come out with the legal submissions whereby he had firstly withdrawn the power of the learned Senior Counsel who appeared for him. We have also seen those legal submissions. Very interestingly, in those legal submissions, the respondent no.2 says in para 2(a):

B "the respondent no.2 is the youngest in the whole family
and was kept to serve the cause of my brother who is elder
to me by 16 years. I was always kept oppressed and
depressed and was subjected to mental and physical
C torture, blackmailing & exploitation at the hands of my
brother & bhabhi – the petitioner herein. My father died in
1985 and after that my brother & bhabhi had let loose their
terror on me. This is for the first time that I have been
compelled to approach the court for my survival. My brother
D was in the Indian Army who had agricultural lands in village
Behait, tehsil Bilaspur, Distt. Rampur. He had given me
power of attorney duly registered from Dist Saugour, M.P.
on 3.4.1970, which is valid till today and has not been
cancelled so far."

E The expressions in the above submissions are self-sufficient.
If the respondent no.2 was kept oppressed and depressed at
the instance of the appellant and her husband, we wonder as
to how a power of attorney could be given and continued in his
name. Further the allegations are wanton, irresponsible and
F irrelevant. Heavy attempt has been made in the legal
submissions to refer to the earlier Transfer Petitions which were
dismissed by this Court. We have already shown as to how the
Transfer Petitions were irrelevant. At one place it is suggested
as follows:

G "The petitioner is wise enough to create equity in her favour
by alleging that she is ailing and ageing woman of 73
years having daughters and no son. There is no provision
in the Indian Constitution which entitles and empowers a
senior citizen of India to commit economic as well as
H criminal offences and side by side provides full protection

and shelter from getting the person persecuted, if found guilty."

In para 2(e) of his submissions, respondent no. 2 states:

"Now the petitioner has been raising the issue as to what benefit she was going to derive from forging the dates from 6.5.02 to 16.5.02 and from 7.5.02 to 17.5.02 & 27.5.02. *The correct answer to this has to be given by a person who has committed this fraud as is laid down u/s 106 of the Evidence Act. This is a self confessional case in which the petitioner has mentioned categorically that the forgery in changing the dates has been committed by her Advocate. She is habitual in committing fraud, whenever she gets opportunity to do so, just for greed of money and to get more and more material possession.* If she was not going to derive any benefit from changing the dates from 10 to 20 days than why she has committed this fraud. She cannot be absolved from committing the forgery which requires her trial in the appropriate court. In fact it is not an ordinary case of condoning the delay of 10 to 20 days but is a part of deep rooted conspiracy to usurp and grab the land of five families consisting of 40 members whose future and livelihood has been put at stakes by the petitioner. After the land was sold by her husband and her daughter through their attorney, to common relations of both, the respondent no.2 and the husband of the petitioner, the land prices had gone up by 10 times which led the petitioner to file six cases after a period of 11 years with malafide intention to grab the land."

(emphasis supplied)

We have deliberately quoted the whole para in order to show that even the respondent no.2 has not been able to show as to how the appellant could be benefited in any manner by changing the dates. We, therefore, find that since there was no question of the appellant gaining anything, she would not have made the

- A aforementioned changes in the document. How the document is changed is not for us to explain. However, whosoever may have changed those documents, the said change did not and could not result in any illegal gains to the appellant or illegal loss to anybody. Such changes were, therefore, innocuous and did not give rise to any offences.
- B

20. We do not go into the merits as we are completely convinced that this is a case for a malicious and vengeanceful prosecution which has no base. It is, therefore, well covered under the Guidelines 1 and 7 laid down by this Court in the matter of *State of Haryana vs. Bhajan Lal* [(1992) Supp. 1 SCC 335] which read as under:

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- “1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
- D

2-6 xxx xxx xxx

- E 7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”
- F

21. This is apart from the fact that we are completely convinced of the whole lack of bona fides on the part of the Investigating Officer who is reported to have retired now. Even he has filed a Reply Affidavit before us as we had directed him to attend the court seeing the utter misuse of his powers of investigation.

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22. We expected some explanation and some justification for the arrest as well as for the subsequent investigation of the

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non-existing crimes. Obviously the whole affidavit, which we have seen very closely, is silent. Again reliance has been made on the earlier Transfer Petitions by this Police Officer also which is totally irrelevant for the present controversy. He has not explained as to how he viewed the same as an offence of forgery, cheating, etc., and for that matter how dishonest intention was deduced by him. A B

23. In view of the above we are of the clear opinion that this prosecution is nothing but an abuse of the process of law and we, therefore, allow this appeal, set aside the impugned judgment and quash the Prosecution Case No.3045 of 2004 pending in the court of Chief Judicial Magistrate, Rampur. C

D.G.

Appeal allowed.