

HIGH COURT OF MADHYA PRADESH**Bench: Hon'ble Justice Gural Singh Ahluwalia****Date of Decision: 28th May 2024**

Case No.:

WRIT PETITION No. 23745 of 2022

PETITIONER(S):**Rajkamal David Lall****Ajai Lall****RESPONDENT(S):****The State of Madhya Pradesh****Superintendent of Police, E.O.W., District Sagar****Station House Officer, Police Station E.O.W. Bhopal (Dehat), District Bhopal****Legislation:**

Article 226 of the Constitution of India

Sections 420, 120-B of the Indian Penal Code (IPC)

Section 48(b) of the Indian Stamp Act

Section 29 of the Indian Stamp Act

Section 55 of the Transfer of Property Act

Subject: Writ petition seeking quashing of FIR related to alleged evasion of stamp duty in a property transaction.**Headnotes:**

Criminal Law – FIR Quashing – Sections 420, 120-B IPC – Alleged Evasion of Stamp Duty – Petitioners sold property recorded as residential land in revenue records – FIR alleged commercial land sold as residential to evade stamp duty – Petitioners contended liability to pay stamp duty rests on purchaser – Court found no misdescription by petitioners regarding land use – FIR quashed [Paras 2-29].

Mens Rea – Essential Element of Crime – Absence of Criminal Intent – No False Declaration – Petitioners did not misrepresent land use – Absence of mens rea for evading stamp duty – Investigating Agency's action deemed misuse of authority [Paras 20-27].

Judicial Review – Scope under Article 226 – High Court's Interference – Criminal Proceedings – FIR found inherently improbable – Allegations insufficient to make out prima facie case – Investigation not warranted [Paras 9-11, 26-29].

Decision:

FIR in Crime No.88/2022 registered by EOW, Bhopal quashed. Petition allowed.

Referred Cases:

- Neeharika Infrastructure Private Limited v. State of Maharashtra (2021) 19 SCC 401
- Directorate of Enforcement v. Niraj Tyagi 2024 SCC OnLine SC 134
- Narendra Jain v. Lokayukta Police Establishment & Ors. I.L.R. 2023 M.P. 1910 (DB)
- Premier Vegetable (Pvt.) Ltd. Jaora v. State of M.P. AIR 1986 MP 258
- M/s Online Entertainment Private Limited and Anr. v. The State of Jharkhand and Anr. AIR Online 2021 Jha 384
- State of Madhya Pradesh v. Surendra Kori (2012) 10 SCC 155
- State of Uttar Pradesh v. Akhil Sharda 2022 SCC OnLine SC 820
- Kaptan Singh v. State of Uttar Pradesh (2021) 9 SCC 35
- Jitul Jentilal Kotecha v. State of Gujarat (2022) 13 SCC 652
- Union of India v. Ganesh Das Bhojraj (2000) 9 SCC 461
- Gopaldas Udhavdas Ahuja v. Union of India (2004) 7 SCC 33
- Kailash Kumar Sanwatia v. State of Bihar (2003) 7 SCC 399
- R. Balakrishna Pillai v. State of Kerala (2003) 9 SCC 700

Representing Advocates:

For Petitioners: Shri Vivek Krishna Tankha, Senior Advocate with Shri Shashank Shekhar and Shri Samresh Katare, Advocates

For Respondents: Shri Mohan Sausarkar, Government Advocate and Shri Madhur Shukla, Advocate for EOW

ORDER

This petition under Article 226 of Constitution of India has been filed seeking following relief(s):-

- (i) That, this Hon'ble Court may kindly be pleased to quash F.I.R. dated 26/09/2022 (Annexure P-1) bearing Crime No.88/2022 registered at respondent no.3 Police Station.
- (ii) That this Hon'ble Court may kindly be pleased to call for the records of the case, for kind perusal of Hon'ble Court.
- (iii) Any other relief/reliefs, order/orders, direction/directions which this Hon'ble Court may deem fit and proper may kindly be granted to the petitioner.

2. It is the case of petitioners that petitioners have inherited 1436.43 sq.mtr. of land forming part of khasra No.155/1/1 situated in Civil Lines, Ward No.7, Damoh. Petitioners sold the said property to one Rajendra Singh Bagga vide three different registered sale-deeds dated 22/10/2019, 04/10/2019 and 12/09/2019. A revenue case with regard to deficit stamp duty was registered by the Collector of Stamps as case No.64/B-103/2019-20 under Section 48(b) of Stamp Act. The Collector of Stamps, Damoh after taking into consideration the entire case in hand, came to a conclusion that there is a deficit stamp duty amounting to Rs.76,21,259/- and accordingly, it was directed that it shall be paid by purchaser Rajendra Singh Bagga.
3. It is submitted that since deficit stamp duty was to be deposited by Rajendra Singh Bagga, who was the purchaser, therefore no criminal act was committed by the petitioners, who were the sellers. On 16/12/2021, Nazul Officer, Damoh also issued a No Objection Certificate to the purchaser Shri Rajendra Singh Bagga with respect to part of Plot No.155/1/1 admeasuring 1600 sq.ft. for raising construction over the same.
4. It is the case of petitioners that as per the revenue record, land which was sold by petitioners by the disputed sale-deed was a residential land and no orders were ever passed by the revenue authorities to divert the land from residential to commercial use.
5. It is submitted that surprisingly, EOW on its own registered the FIR in Crime No.88/2022 for offence under Sections 420 and 120-B of IPC. The allegations levelled in the FIR are to the effect that petitioner No.2 is involved in the act of grabbing and selling the lands owned by Christian Missionary and the *modus operandi* adopted by the petitioners is that by misrepresenting the lands which are of commercial usage to be the lands under residential usage, huge losses are being caused to the Government by evading stamp duty. It was further alleged that in the year 2019, petitioners in connivance with each other had sold a piece of commercial land vide registered sale-deed dated 12/09/2019 by showing it to be a residential land and the registry of the same was done by reflecting the land under residential usage thereby evading stamp duty and causing loss to the Government. The Collector, Stamps by order dated 11/02/2020 passed in case No.64/B-103/2019-2020 under Section 48(b) of the Indian Stamp Act has imposed a penalty of Rs.76,21,259/- on the purchaser.
6. Challenging the FIR, it is submitted by counsel for petitioners that undisputedly the land in dispute is recorded as residential land in the revenue

records and three sale-deeds were executed. Since some part of the land was situated by the side of main road, therefore two sale-deeds were executed by treating the said land as commercial land, whereas the land in question which was the subject matter of sale-deed dated 12/09/2019 was situated behind the land which was subject matter of other two sale-deeds and was 100 meters away from the main road, therefore third sale-deed dated 12/09/2019 was executed by projecting the land to be a residential land. It is submitted by counsel for petitioners that as per the provisions of Section 29 of Indian Stamp Act, the burden to pay the stamp duty is on the purchaser and therefore, petitioners cannot be made vicariously liable for evading the stamp duty. It is the liability of the purchaser to pay the stamp duty even as per Section 55 of Transfer of Property Act. Thus, it is submitted that once the duty to pay the stamp duty is on purchaser, then petitioners cannot be made vicariously liable for evasion of stamp duty. To buttress his contentions, counsel for petitioners has relied upon the judgment passed by Division Bench of this Court in the case of **Narendra Jain Vs. Lokayukta Police Establishment & Ors.** reported in **I.L.R. 2023 M.P. 1910 (DB)**, order passed by Co-ordinate Bench of this Court in the case of **Premier Vegetable (Pvt.) Ltd. Jaora Vs. State of M.P. and Ors.** reported in **AIR 1986 MP 258** and order passed by the High Court of Jharkhand in the case of **M/s Online Entertainment Private Limited and Anr. Vs. The State of Jharkhand and Anr.** reported in **AIR Online 2021 Jha 384**.

7. *Per contra*, petition is vehemently opposed by counsel for EOW. It is submitted by counsel for EOW that once it was decided by Collector of Stamps, Damoh that there was deficit stamp duty and had directed the purchaser to pay the deficit stamp duty along with penalty, then it is clear that it was the case of evasion of stamp duty. The FIR has been lodged on the basis of findings given by the Collector of Stamps. It is further submitted that three sale-deeds were executed. Two sale-deeds were executed by showing the land as commercial land, whereas third sale-deed was executed by showing the land as residential and therefore, there was an evasion of stamp duty. Thus, EOW has rightly registered the FIR against the petitioners as well as the purchaser. To buttress his contentions, counsel for respondents/EOW has relied upon the judgment passed by Supreme Court in the case of **Directorate of Enforcement Vs. Niraj Tyagi and Others** reported in **2024 SCC OnLine SC 134**, **Neeharika Infrastructure Private Limited Vs. State of Maharashtra and Others** reported in **(2021) 19 SCC 401**, **State of Madhya Pradesh Vs. Surendra Kori** reported in **(2012) 10 SCC 155**, **State**

of **Uttar Pradesh and Another Vs. Akhil Sharda and Others** reported in **2022 SCC OnLine SC 820**, **Kaptan Singh Vs. State of Uttar Pradesh and Others** reported in **(2021) 9 SCC 35** and **Jitul Jentilal Kotecha v. State of Gujarat and others** reported in **(2022) 13 SCC 652**. It is submitted that it is well established principle of law that an unborn baby should not be killed and the legitimate prosecution should not be stifled at the initial stage. **However, it was fairly conceded that the land in dispute was recorded as residential land in the revenue records.**

8. Heard learned counsel for the parties.
9. Before considering the submissions made by counsel for the parties, this Court would like to consider the scope of interference at the stage of investigation.
10. The Supreme Court in the case of **Neeharika Infrastructure Private Limited (supra)** has held as under:-

"**33.** In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 CrPC and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/charge-sheet is filed under Section 173 CrPC, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 CrPC and/or under Article 226 of the Constitution of India, our final conclusions are as under:

33.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence.

33.2. Courts would not thwart any investigation into the cognizable offences.

33.3. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on.

33.4. The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases" (not to be confused with the formation in the context of death penalty).

33.5. While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

33.6. Criminal proceedings ought not to be scuttled at the initial stage.

33.7. Quashing of a complaint/FIR should be an exception rather than an ordinary rule.

33.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.

33.9. The functions of the judiciary and the police are complementary, not overlapping.

33.10. Save in exceptional cases where noninterference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

33.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

33.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

33.13. The power under Section 482CrPC is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court.

33.14. However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in *R.P. Kapur* [*R.P. Kapur v. State of Punjab*, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and *Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], has the jurisdiction to quash the FIR/complaint.

33.15. When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482CrPC, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

33.16. The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically.

Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 CrPC before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173 CrPC, while dismissing/disposing of the quashing petition under Section 482 CrPC and/or under Article 226 of the Constitution of India.

33.17. Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 CrPC and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

33.18. Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

11. Thus, where the investigation is pending, then the criminal proceedings should not be scuttled at the initial stage and only in exceptional cases where non-interference would result in miscarriage of justice, the Court should interfere at the stage of investigation of offences. The First Information Report is not an encyclopaedia requiring disclosure of all facts and details relating to the offence reported and therefore, when the investigation is in progress and facts are hazy and the entire material/ evidence is not before the High Court, the Court should restrain itself from passing even the interim orders.
12. The facts and circumstances of the case shall be considered in the light of law laid down by the Supreme Court.
13. The allegations are that three sale-deeds were executed, out of which two sale-deeds were executed by showing different pieces of land as commercial land whereas in the sale-deed dated 12/09/2019 the land was sold by showing it to be a residential land. It was again and again enquired from counsel for EOW as to whether the land in dispute is registered as residential land or not?

14. **It was fairly conceded by counsel for EOW that the land in dispute is recorded as residential land in revenue records.**
15. **It is not the case of respondents that the petitioners were not the owners of the land in dispute and they have alienated the property by impersonating themselves to be the owners of land in dispute.**
16. Therefore, the undisputed facts are that (i) the land which was the subject matter of sale-deed dated 12/09/2019 was recorded as residential land and; (ii) there is no dispute that the petitioners are the owners of the said land.
17. As per Section 29 of Indian Stamp Act as well as Section 55 of Transfer of Property Act, liability to pay the stamp duty is on the purchaser unless and until it is otherwise agreed upon between the parties.
18. Although it was submitted by Shri Vivek Krishna Tankha that when the liability is of the purchaser, then seller cannot be made accused in case if it was found that stamp duty was evaded, but the said submission cannot be accepted as a general view. If the seller has facilitated the purchaser to pay less stamp duty by falsely declaring in the sale-deed about the nature/land use of property, then he can certainly be made an accused for evading the stamp duty as it can be safely said that he was sharing common intention with the purchaser to evade the stamp duty. Therefore, where a sale-deed has been executed by seller with false declaration about the nature/land use of the subject matter of the land, then the seller can certainly be made an accused for evading stamp duty but where declaration with regard to nature / land use of the land was correctly disclosed by the seller in the sale-deed, then the only question which would arise is that whether *mens rea* can be attributed to the seller to evade the stamp duty or not?
19. In the present case, undisputedly, the Collector of Stamps has imposed a penalty of Rs.76,21,259/- on the purchaser, therefore it has been held by Collector of Stamp, Damoh that there was an evasion of stamp duty but the said order was with regard to civil liability. In order to make out an offence under Sections 420, 120-B of IPC, the findings given by Collector of Stamps with regard to civil liability of the purchaser cannot be made sole basis unless and until criminal intent on the part of the seller is clearly discernible from the facts and circumstances of the case.
20. *Mens rea* means a guilty or evil intention which deals with the blameworthy mental condition. The absence of *mens rea* would negative the condition of crime. *Mens rea* is the essential ingredient of criminal liability. *Mens rea* deals

with guilty mind, therefore in order to establish *mens rea*, the intention on the part of the accused must be established.

21. It is true that at the stage of considering the FIR, this Court is not supposed to consider as to whether there is any possibility of conviction or not but this Court can always consider the uncontroverted allegations to find out whether they are sufficient to make out a *prima facie* offence warranting investigation or not and while appreciating the allegations, the Court must not base its conclusion on the basis of preponderance of probabilities or on the basis of conjectures, surmises or suspicion and must find out as to whether there was any *mens rea* or not.
22. The Supreme Court in the case of **Gopaldas Udhavdas Ahuja and Another Vs. Union of India and others** reported in **(2004) 7 SCC 33** has held that where a statute forbids an act, doing of that act itself supplies the *mens rea* and in such a case, prosecution is only required to prove the commission of prohibited act and then it will be for the person concerned to bring himself within the statutory defence.
23. Similarly, the Supreme Court in the case of **Kailash Kumar Sanwalia v. State of Bihar and Another** reported in **(2003) 7 SCC 399** has held that question of intention is not a matter of direct proof and certain broad tests should be considered while deciding whether in a particular case the accused has *mens rea* for the crime or not.
24. Similarly the Supreme Court in the case of **R. Balakrishna Pillai v. State of Kerala** reported in **(2003) 9 SCC 700** has held that element of *mens rea* and intention must accompany the culpable act or conduct of the accused. Mere intention is not punishable except when it is accompanied by an act or conduct of commission or omission on the part of the accused and further, *mens rea* would differ from crime to crime. It was also held that accused must have the mental state or degree of fault at the relevant time and accordingly, has held as under:-

"43. To consider yet another aspect, the general principle of criminal jurisprudence is that element of *mens rea* and intention must accompany the culpable act or conduct of the accused. In respect of this mental element generally, *Blackstone's Criminal Practice* [*Ibid.*, A-2.1, p. 18] describes it as under:

"In addition to proving that the accused satisfied the definition of the actus reus of the particular crime charged, the prosecution must also prove mens rea i.e. that the accused had the necessary mental state or degree of fault at the relevant time. Lord Hailsham of St. Marylebone said in *Director of Public Prosecutions v. Morgan* [1976 AC 182 : (1975) 2 All ER 347

(HL)], AC at p. 213: ‘The beginning of wisdom in all the “mens rea” cases ... is as was pointed out by Stephen, J. in *Tolson* [*R. v. Tolson*, (1889) 23 QBD 168 : (1886-90) All ER Rep 26 : 60 LT 899], QBD at p. 185, that “mens rea” means a number of quite different things in relation to different crimes.’ Thus one must turn to the definition of particular crimes to ascertain the precise mens rea required for specific offences.” The author then comments:

“Criminal offences vary in that some may require intention as the mens rea, some require only recklessness or some other state of mind and some are even satisfied by negligence. The variety in fact goes considerably further than this in that not only do different offences make use of different types of mental element, but also they utilise those elements in different ways.” It is clear thus that the accused must have the mental state or degree of fault at the relevant time. It may of course differ from crime to crime according to the definition thereof. The matter of degrees may also differ. That is to say, generally the mental state and the criminal act must coincide. The criminal act may be one which may be intended by the wrongdoer. It is as well known that mere intention is not punishable except when it is accompanied by an act or conduct of commission or omission on the part of the accused. As indicated earlier, situation varies in respect of different kinds of crimes as in some of them even negligence or careless act may constitute an offence or there may be cases of presumptions and putting the accused to proof to the contrary. In the case in hand we have found that there is no sale of energy to M/s GIL by KSEB nor had the appellants any say in price fixation for M/s GIL by KEB. In this light we may pass on to J.C. Smith & Brian Hogan: *Criminal Law* [Smith, J.C. & Hogan, B.: *Criminal Law*, 6th Edn., p. 31], where the proposition of law is put as follows:

“It is a general principle of criminal law that a person may be convicted of a crime unless the prosecution have proved beyond reasonable doubt both (a) that he caused a certain event or that responsibility is to be attributed to him for the existence of a certain state of affairs, which is forbidden by criminal law, and (b) that he had a defined state of mind in relation to the causing of the event or the existence of the state of affairs. The event, or state of affairs, is called the actus reus and the state of mind the mens rea of the crime.”

44. We further find the said principle of criminal jurisprudence stated in *Criminal Law* by K.D. Gaur [Gaur, K.D.: *Criminal Law — Cases and Materials*, 3rd Edn., p. 23], wherein it is stated as follows:

“Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, *actus non facit reum, nisi mens sit rea*. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable, it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called *actus*

reus and *mens rea* respectively.”

45. Glanville Williams in *Criminal Law* [Williams, Glanville: *Criminal Law — The General Part*: 2nd Edn., p. 1] has also stated as follows in connection with the intention accompanying the act:

“The chief problems in the general part of criminal law pertain to the requirement of a criminal state of mind, *mens rea*; but these cannot be adequately discussed without a preliminary exploration of the nature of an *actus reus*.”

It is further stated:

“Although thoughts are free, the uttering of them is another matter. Speaking or writing is an act, and is capable of being treason, sedition, conspiracy or incitement; indeed, almost any crime can be committed by mere words, for it may be committed by the accused ordering an innocent agent (e.g. a child under eight) to do the act. But to constitute a criminal act there must be (as said already) something more than a mere mental resolution. Apparent, but not real, exceptions to this proposition are treason and conspiracy. It is treason to compass the King's death, but the law requires an overt act manifesting the intention; and this act must be something more than a confession of the intention. It must be an act intended to further the intention; perhaps, too, it must actually do so....”

25. The Supreme Court in the case of **Union of India and Others Vs. Ganesh Das Bhojraj** reported in **(2000) 9 SCC 461** has pointed out three exceptions to the applicability of doctrine of *mens rea* and has held as under:-

"24. *Actus non facit reum, nisi mens sit rea* (the intent and act must both concur to constitute the crime). The general rule is that there must be the mind at fault before there can be a crime. Whether or not *mens rea* is an essential ingredient of an offence would depend on the object and purpose of a statute and the phraseology employed by the legislature in defining the offence. The doctrine that *mens rea* is an essential ingredient in every offence has three recognised exceptions: (i) cases not criminal in any real sense but which in the public interest are prohibited under a penalty; (ii) public nuisance; and (iii) cases criminal in form but which are really only a summary mode of enforcing a civil right (see *Sherras v. De Rutzen* [(1895) 1 QB 918, 922 : 64 LJMC 218 : 72 LT 839] — QB at p. 922; also see *Nathulal v. State of M.P.* [AIR 1966 SC 43 : 1966 Cri LJ 71] and observations of K. Subba Rao, J. in his dissenting opinion in *State of Maharashtra v. Mayer Hans George* [AIR 1965 SC 722 : (1965) 1 Cri LJ 641 : (1965) 1 SCR 123]). Vide para 16 K. Subba Rao, J. has given an illustration. An aeroplane in which a person with gold on his body is travelling may have a forced landing in India and yet he would be liable to be punished with a jail term extending to two years."

26. If the facts and circumstances of the case are considered in the light of law laid down by Supreme Court, then it is clear that once the revenue

authorities had recorded the land in dispute as a residential land, then the declaration made by petitioners in the sale-deed that the land in dispute is a residential land, cannot be said to be an incorrect declaration. If the Investigating Agency was of the view that in fact the land in dispute was having a commercial value and it should not have been recorded as a residential land, then why the Investigating Agency has not registered the offence against the revenue officers who have recorded the land in dispute as a residential land in the revenue records? The same could not be explained by counsel for EOW. The Investigating Agency cannot claim that the act of registration of land as a residential land by the revenue authorities was correct but declaration of same land as residential land in the sale-deed by the seller is illegal.

27. Under these circumstances, this Court is of considered opinion that once there is no mis-description about the nature/ land use of the land in dispute in the sale-deed executed by petitioners, then whatever civil liability may be but it cannot be said that the petitioners were having any *mens rea* to facilitate the purchaser in any manner to evade the stamp duty.

28. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that the registration of FIR against the sellers amounts to misuse of authority and uncontroverted allegations do not make out a *prima facie* case of commission of cognizable offence and the allegations made in the FIR are so absurd and inherently improbable on the basis of which no prudent person can ever reach just to conclusion that there is a sufficient ground for proceeding against the accused.

29. Under these circumstances, FIR in Crime No.88/2022 registered by EOW, Bhopal against the petitioners is hereby **quashed**.

30. Petition succeeds and is hereby **allowed** to the extent mentioned above.

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