

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 8097/2024

Rakesh Jain S/o Late Shri Mohanlal Sethiya, R/o Vikram Chowk,
Ladpura, Kota (Raj).

----Petitioner

Versus

1. State of Rajasthan, through the Public Prosecutor.
2. Rajkumar Sethiya S/o Shri Late Shri Lalchand, R/o
Vikram Chowk, Ladpura, Kota (Raj).

----Respondents

For Petitioner(s)	:	Ms. Harshita Sharma Mr. Vivek Yadav Mr. Tushar Sharma Ms. Swadha Bhargav for Dr. Mahesh Sharma
For Respondent(s)	:	Mr. Amit Gupta-PP Mr. Anil Kumar Sharma

JUSTICE ANOOP KUMAR DHAND

Order

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| 1. | Date of conclusion of arguments | 11/11/2025 |
| 2. | Date on which the judgment was reserved | 11/11/2025 |
| 3 | Whether the full judgment or only the operative part is pronounced: | Full judgment |
| 4. | Date of pronouncement | 18/11/2025 |

Reportable

1. The Hon'ble Apex Court while deciding the Special Leave to Appeal (Crl.) No. 2943/2025 has passed an order on 03.03.2025 directing this Court to take up the matter and decide the instant criminal misc. petition expeditiously.

2 Pursuant to the aforesaid order passed by the Hon'ble Apex Court, the matter was posted at the top of the list and with the

consent of counsel for the parties, arguments have been heard and the instant misc. petition is decided by this Court.

3. By way of filing the instant criminal misc. petition, a prayer has been made for quashing the FIR No. 324/2024 registered with Police Station Ashok Nagar, Jaipur City (South) for the offences under Sections 420, 467, 468, 471 and 120-B IPC.

4. Counsel for the petitioner submits that a suit for partition was filed by the complainant-respondent-plaintiff against the instant petitioner-defendant before the Court of Additional District Judge No. 6, Kota registered as Case No. 212/2018 and titled as Rajkumar Sethia Vs. Mohan Lal Jain and Ors. Counsel for the petitioner submits that the petitioner was one of the defendants in the aforesaid suit. Since the proceedings of the suit were going on at a snail's pace, the petitioner submitted S.B. Civil Writ Petition No. 12503/2023 seeking direction for expeditious disposal of the aforesaid suit. However, the office pointed out a defect that the cause title of the petition was not matching with the Civil Suit and the signatures were also not matching with the respective party's name. Counsel submits that the aforesaid petition was filed by Ms. Sharda Bai Gurjar, Adv. who received the requisite papers from a local counsel of the petitioner i.e. Dharmendra Kumar Shrivastava-Advocate, practicing at Kota. Counsel submits that it appears that the advocate's clerk has put his own signatures under the name of the petitioner -Rakesh Jain in the petition and thereafter, the file was passed and listed before the Court and the petition was disposed of by the Co-ordinate Bench of this Court on 27.02.2024 and directions were issued to the trial Court for expeditious disposal of the aforesaid pending Civil Suit. Counsel submits that

subsequently, the mistake was realized by counsel for the complainant-respondent, hence, a Civil Writ Misc. Application No. 157/2024 was submitted by the petitioner for clarification of the situation and this time the aforesaid application was submitted with the original signatures of the petitioner, however the office again pointed out a defect regarding mismatch of the cause title. Counsel submits that a per-emptory order was passed on 23.07.2025 asking the petitioner to remove the defect(s). Since the aforesaid order was passed in the absence of counsel appearing on behalf of the petitioner, the said per-emptory order was not complied with and the case was dismissed for want of compliance of the per-emptory order by the Registrar (Judicial) vide order dated 29.08.2024. Counsel submits that subsequently, an application under Section 340 Cr.P.C bearing No. 188/2024 was submitted by the complainant-respondent before this Court for initiating the proceedings against the petitioner, however, the same was withdrawn by him on 18.10.2024. Counsel submits that the petitioner has never put his signatures under the name of the other side in any of the papers submitted before this Court either in the writ petition or misc. application. Counsel submits that the petitioner submitted a complaint against his local counsel i.e. Dharmendra Kumar Shrivastva before the Bar Association, Kota and before the Bar Council of Rajasthan for taking action against him for committing the aforesaid nuisance. Counsel submits that subsequently, the suit filed by the plaintiff was rejected by the Trial Court, against which he preferred S.B. Civil First Appeal No. 1772/2025 before this Court and the same is still lying pending for its adjudication on merit. Counsel submits that in order to put the

petitioner under pressure to settle the dispute, now the instant FIR has been lodged against the petitioner with vague allegations of cheating and fraud. Counsel submits that a bare perusal of the contents of the impugned FIR does not reveal that the petitioner has committed any offence whatsoever. Hence under these circumstances, the proceeding arising out of the impugned FIR be quashed. In support of his contentions, she has placed reliance upon the following judgments:-

1. **Mariam Fasihuddin and Anr. Vs State of Aduodi Police Station and Anr.** (Criminal Appeal No. 335/2024, decided on 22.01.2024)
2. **Md Ibrahim and Ors. Vs. State of Bihar and Anr.** (Criminal Appeal No. 1695/2009, decided on 04.09.2009)
3. **Sucha Singh Mann and Anr. Vs. State of Punjab and Ors.** reported in **2023(3) RCR (Criminal)36.**

5. Per contra, learned Public Prosecutor as well as counsel appearing on behalf of the complainant opposed the arguments raised by counsel for the petitioner and submitted that the respondent -complainant never approached this Court by way of filing any writ petition seeking directions for expeditious disposal of the suit pending before the trial Court. The forged signatures of the plaintiff were created by the petitioner -Rakesh Jain and by doing so, a wrong order was obtained by him and the same was used before the Trial Court for his personal gain, hence the petitioner has committed an offence of cheating and played fraud on the Court as well as on the plaintiff/complainant-respondent.

Counsel submits that the contents of the impugned FIR reveals commission of a cognizable offence and the same is required to be investigated by the Investigating Officer. Hence, interference of this Court is not warranted.

6. Heard and considered the submissions made at Bar and perused the material available on record.

7. When the matter was listed before the Co-ordinate Bench of this Court on 24.01.2025, further proceedings arising out of the impugned FIR were stayed and thereafter, when the matter was listed before the Co-ordinate Bench of this Court on 23.07.2025, a direction was issued by the Co-ordinate Bench of this Court for holding an enquiry by the Registrar (Judicial). Thereafter, an enquiry was conducted by the Registrar(Judicial) of this Court wherein statements of the complainant-respondent, PEW01- Rajkumar Sethia, PEW02- Ms. Sharda Bai Gurjar, PEW03- Rakesh Kumar Jain, PEW04- Mr. Dharmendra Kumar Shrivastava- local advocate of the petitioner practicing at Kota, PEW05- Mr. Anil Kumar Sharma, PEW06- Ms. Saroj Singh associate counsel of Mr. Anil Kumar Sharma, PEW07- Mr. Omprakash Sharma- Advocate Clerk, PEW08- Mr. Amrish Balaria-Advocate, PEW09- Ms. Ayushi Shrivastava D/o Dharmendra Kumar Shrivastva, PEW10- Ms. Sundari Devi Sharma, PEW11-Mr. Jai Singh, PEW12-Mr. Satish Chandra Mittal, PEW13- Dr. Mahesh Sharma and PEW14- Mr. Tushar Sharma were recorded and on the basis of the statements of the above stated witnesses, following conclusion was drawn by the Registrar (Judicial), in its enquiry conducted on 19.09.2025 which reads as under:-

"Considering all the facts and circumstances of the case, prima facie the undersigned is of the opinion that although there is no single person who can be definitively called the "miscreant/wrongdoer" the evidence strongly indicates that Mr. Dharmendra Kumar Srivastava advocate, Ms. Sarda Gurjar advocate, Sh. Omprakash Sharma advocate clerk and Ms. Sundari Devi, as oath commissioners has committed the mistake/fault. They appears to have filing of writ petition No. 12503/2023 with the wrong cause title (Exhibit PE-03) supported by affidavit (Exhibit PE-08 and PE-04) without verifying the facts. Mr. Dharmendra Kumar Shrivastava advocate also submitted an affidavit in SB Criminal Misc. Petition No. 8097/2024, in the name of Mr. Om Prakash, Advocate Clerk without his knowledge.

In addition to the above, both Mr. Jai Singh and Ms. Sundari Devi, as oath commissioners, verified the documents without the physical presence of the person making the affidavits. This is a serious breach of the duties of an oath commissioner."

8. Perusal of the above enquiry report reveals that S.B.Civil Writ Petition No. 12503/2023 was submitted before this Court at the instance of the petitioner, with an incorrect cause title thereby incorporating the name of the complainant in the array of cause title as the petitioner for seeking direction for expeditious disposal of the suit filed by the complainant before the Trial Court. Initially, the affidavit was filed in the name of the complainant but it was bearing the signatures of the petitioner, hence, the signatures of the defendant were not matching with the name of the defendant and this objection was raised by the office.

Instead of rectifying the mistake by submitting a correct petition containing correct cause title, an affidavit with incorrect

signatures of the complainant was submitted in the office and the file of the petitioner was passed by the office and the above petition came to be disposed of on 27.02.2024 with the direction to the Trial Court to expedite the proceedings of the suit. Later on, this mistake was realized hence a misc. application No. 157/2024 was submitted for clarification of the order but none appeared on behalf of the petitioner and the said application was disposed of with direction to remove the defects within the stipulated time but the said per-emptory order was not complied with within the fixed time and the application was dismissed on 29.08.2024 for want of compliance of the per-emptory order.

Later on, another misc. application No. 188/2024 was submitted by the complainant for initiating enquiry under Section 340 Cr.P.C. but the said application was withdrawn and the instant FIR has been registered by him.

9. The first and foremost argument, raised by counsel for the petitioner, is that the petitioner has not made the signatures of the complainant in this petition. He supplied the papers to his local counsel with correct signatures and if mistakes have been committed by anyone from the Advocate's office, he cannot be held liable and responsible for the same and he has not received any financial or any other benefits from the order dated 27.02.2024, hence, he has not committed any offence of cheating and forgery.

10. This Court is not going into the controversy as to whether the petitioner has been benefited from the order dated 27.02.2024 or not or whether he has cheated the complainant or not. The petitioner may be right in saying so but this Court cannot ignore

this fact that mischief has been committed with the record of this Court, after submission of the writ petition, by submitting a petition in the name of the complainant with his incorrect signatures. Such practice of filing a petition with incorrect signatures of a party is not appreciable on the part of the litigant, the lawyers or their clerks.

11. Recently, it is noticed that there has been a growing trend of Advocates' Clerk or Advocate signing the affidavits for applications/petitions/counter affidavit etc. imperviously and oblivious of the contents therein. A vakaltnama to represent a party in Court is held by an advocate and the brief is entrusted to the Advocate. The Advocate client relationship is quite clearly accepted as a fiduciary relationship and the communication is privileged and confidential. It is strictly between the client and the Advocate. Neither the brief nor the permission to represent a party is to be shared by the Advocate with his clerk. An Advocate or his clerk signing any petitions/applications/reply or affidavit instead of the party himself or a person designated/authorized by the party or the Advocate holding the Vakalatnama's/petition is unacceptable and such attempts to subvert the law is impermissible.

12. An advocate's clerk, no doubt renders invaluable assistance in the advocate's office in various day to day matters including filing, effecting service, coordination etc. Nothing entitles or enables an advocate's clerk to appear before the Court on behalf of an advocate. Similarly, an advocate's clerk cannot swear affidavits in a perfunctory manner for petitions/applications on behalf of a party before the court, especially those which include

facts beyond his personal knowledge or where he cannot completely explain how he derived knowledge of the facts he has affirmed.

13. Advocates are the officers of the Court. They are wheels of justice. Administration of justice mostly depends upon the fiduciary relationship shared by the Bar and the Bench. The trust which is reposed on the legal professionals by the Court is of utmost good faith. Needless to say, let alone affidavits, the Courts do not think twice before presuming any document filed by an Advocate to be genuine. Justice is often metaphorically termed to be blind, but the officers of Courts must not dare to betray the trust of the Bench deeming the Judges to be sightless. They may not forget that it is this very justice delivery system which provides the Judges with farsightedness and confers extraordinary powers on their shoulders to ensure that blind-eye of the lady of justice does not make the society believe that the entire justice delivery system is visionless. Fraud played on this Court by an Advocate or for that matter even by an Advocate's clerk is a severe form of contemptuous attitude.

It is the responsibility of the Advocate and the Advocate's clerks to bring correct state of affairs before the Court and their attempt should not be to misguide the Court in any manner. If the Advocate or the Advocate's Clerk has no personal knowledge about a particular document which is produced by a party, then it is to be verified properly before bringing the same on record and it is also better to ask the concerned party to swear the affidavit.

14. The practice of Advocates or their clerks in filing the affidavit/petition/application/reply without proper representation

with their own signatures cannot be appreciated and the same is liable to be deprecated. It is the duty of the litigants and their Advocates to file the petition/application/reply/affidavit in accordance with the Rules, with correct signatures of the party concerned to assist the Court in administration of Justice.

15 In the instant case also the writ petition has been submitted before this Court with incorrect signatures and incorrect cause title. Though, the order passed in S.B. Civil Writ Petition No. 12503/2023 has not caused any prejudice or loss to anyone, even then this Court would not appreciate such unwarranted act of the Litigant/Advocate/Advocate's Clerk for the wrong done by them.

16. This Court cannot adjudge the correctness of the allegation leveled in the FIR at this stage as to exactly who is responsible for creating this unwarranted situation. Certainly, it is a task of the Investigating Officer to investigate.

17. Hence, this Court is not inclined to quash the FIR inasmuch as, it would give a wrong message to the society at large. This Court would not allow anyone to commit mischief with the record of this Court, as the High Court is the Court of Records. If such unwarranted practice of filing petition with incorrect signatures, even in future, is allowed to continue, the citizen of the State/Country would lose faith in the judicial administration system.

18. Keeping in view all these facts and circumstances of the case, this Court deems it just and proper to dispose of the instant criminal misc. petition with direction to the Investigation Officer to proceed with the investigation in the light of judicial enquiry conducted by the Registrar(Judicial) of this Court and draw an

independent conclusion and proceed further strictly in accordance with law. Let a copy of the enquiry report be supplied to the Investigating Officer.

19. If the Investigation Officer ultimately comes to the conclusion that cognizable offence is made out against anyone, then before proceedings further in the matter, a notice under Section 35 of the BNS would be given to such person. If the Investigating Officer comes to the conclusion that the order dated 27.02.2024 passed by this Court in S.B. Civil Writ Petition No. 12503/2023 has not caused any prejudice to anyone, then he may conclude the matter and submit his report accordingly.

20. With the aforesaid observations and directions, the instant criminal misc. petition stands disposed of.

21. Needless to say that, the Investigating Officer or any Court of law, would not be influenced by any of the observations made by this Court and they would be at liberty to proceed with the matter independently and in accordance with law, on the basis of the material available on the record.

22. Before parting with this order, as a matter of caution, this Court expects from the lawyers and their clerks that such mistake/blunder may not occur in future, in the best interest of the litigants and judicial administration system.

23. The matter be placed before Hon'ble the Chief Justice under the administrative side for consideration as to whether a notice be put in all the Stamp Reporter Sections of Civil, Writ and Criminal, at the Principal Seat and Bench of this Court, cautioning the Advocate's clerks not to make signatures of the litigants and lawyers on any petition/application/reply or vakalatnama,



otherwise stern action would be taken against them after following the due process and in accordance with law.

(ANOOP KUMAR DHAND),J

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