

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 2011/2023

1. Piyush Doshi S/o Sh. Dwarka Das Doshi, Aged About 53 Years, R/o E-91 Shastri Nagar Jodhpur
2. Mahaveer Doshi S/o Sh. Dwarka D1as Doshi, Aged About 45 Years, R/o E-91 Shastri Nagar Jodhpur
3. Ajay Purohit S/o Sh. Prakash Chander, Aged About 48 Years, R/o Near Shiv Mandir Jalap Mohalla Jodhpur
4. Chima Ram S/o Umeda Ram Jat, Aged About 39 Years, R/o Vill. Lolti Height Barmer

-----Petitioners

Versus

1. State Of Rajasthan, Through Pp
2. Babulal Gehlot S/o Bhanwar Lal Mali, R/o Khemeka Kua Pal Road Shastri Nagar Jodhpur

-----Respondents

Connected With

S.B. Criminal Misc(Pet.) No. 2012/2023

1. Piyush Doshi S/o Sh. Dwarka Das Doshi, Aged About 53 Years, R/o E-91, Shastri Nagar, Jodhpur.
2. Mahaveer Doshi S/o Sh. Dwarka Das Doshi, Aged About 45 Years, R/o E-91, Shastri Nagar, Jodhpur.
3. Ajay Purohit S/o Sh. Prakash Chander, Aged About 48 Years, R/o Near Shiv Mandir, Jalap Mohalla, Jodhpur.
4. Chima Ram S/o Umeda Ram Jat, Aged About 39 Years, R/o Village Lolti Height, Barmer.

-----Petitioners

Versus

1. State Of Rajasthan, Through Pp
2. Chotaram Sankhla S/o Sh. Pokar Ram, R/o Khemeka Kua, Pal Road, Shastri Nagar, Jodhpur.

-----Respondents

S.B. Criminal Misc(Pet.) No. 2506/2023

1. Piyush Doshi S/o Sh. Dwarka Das Doshi, Aged About 53 Years, E-91, Shastri Nagar, Jodhpur.
2. Mahaveer Doshi S/o Sh. Dwarka Das Doshi, Aged About

45 Years, E-91, Shastri Nagar, Jodhpur.

3. Ajay Purohit S/o Sh. Prakash Chander, Aged About 48 Years, Near Shiv Mandir, Jalap Mohalla, Jodhpur.

-----Petitioners

Versus

1. State Of Rajasthan, Through Pp
2. Ambaram S/o Sh. Ramlal, Plot No. 8, Ganpati Nagar, Near Daukiya Hospital Soorsagar Road, Jodhpur.

-----Respondents

S.B. Criminal Misc(Pet.) No. 3815/2023

1. Piyush Dosi S/o Sh. Dwarka Das Dosi, Aged About 53 Years, R/o E-91, Shastri Nagar, Jodhpur.
2. Mahaveer Dosi S/o Sh. Dwarka Das Dosi, Aged About 45 Years, R/o E-91, Shastri Nagar, Jodhpur.
3. Ajay Purohit S/o Sh. Prakash Chander, Aged About 48 Years, R/o Near Shiv Mandir, Jalap Mohalla, Jodhpur.

-----Petitioners

Versus

1. State Of Rajasthan, Through Pp
2. Ambaram S/o Sh. Ramlal, R/o Plot No. 8, Ganpati Nagar, Near Daukiya Hospital Soorsagar Road, Jodhpur.

-----Respondents

S.B. Criminal Misc(Pet.) No. 3816/2023

1. Piyush Dosi S/o Sh. Dwarka Das Dosi, Aged About 53 Years, R/o E-91, Shastri Nagar, Jodhpur.
2. Mahaveer Dosi S/o Sh. Dwarka Das Dosi, Aged About 45 Years, R/o E-91, Shastri Nagar, Jodhpur.
3. Ajay Purohit S/o Sh. Prakash Chander, Aged About 48 Years, R/o Near Shiv Mandir, Jalap Mohalla, Jodhpur.

-----Petitioners

Versus

1. State Of Rajasthan, Through Pp
2. Ambaram S/o Sh. Ramlal, R/o Plot No. 8, Ganpati Nagar, Near Daukiya Hospital Soorsagar Road, Jodhpur.

-----Respondents

S.B. Criminal Misc(Pet.) No. 3817/2023

1. Piyush Dosi S/o Sh. Dwarka Das Dosi, Aged About 53 Years, R/o E-91, Shastri Nagar, Jodhpur.
2. Mahaveer Dosi S/o Sh. Dwarka Das Dosi, Aged About 45 Years, R/o E-91, Shastri Nagar, Jodhpur.
3. Ajay Purohit S/o Sh. Prakash Chander, Aged About 48 Years, R/o Near Shiv Mandir, Jalap Mohalla, Jodhpur.

-----Petitioners

Versus

1. State Of Rajasthan, Through Pp
2. Ambaram S/o Sh. Ramlal, R/o Plot No. 8, Ganpati Nagar, Near Daukiya Hospital Soorsagar Road, Jodhpur.

-----Respondents

S.B. Criminal Misc(Pet.) No. 3819/2023

1. Piyush Dosi S/o Sh. Dwarka Das Dosi, Aged About 53 Years, R/o E-91, Shastri Nagar, Jodhpur.
2. Mahaveer Dosi S/o Sh. Dwarka Das Dosi, Aged About 45 Years, R/o E-91, Shastri Nagar, Jodhpur.
3. Ajay Purohit S/o Sh. Prakash Chander, Aged About 48 Years, R/o Near Shiv Mandir, Jalap Mohalla, Jodhpur.

-----Petitioners

Versus

1. State Of Rajasthan, Through Pp
2. Ambaram S/o Sh. Ramlal, R/o Plot No. 8, Ganpati Nagar, Near Daukiya Hospital Soorsagar Road, Jodhpur.

-----Respondents

S.B. Criminal Misc(Pet.) No. 3820/2023

1. Piyush Dosi S/o Sh. Dwarka Das Dosi, Aged About 53 Years, R/o E-91, Shastri Nagar, Jodhpur.
2. Mahaveer Dosi S/o Sh. Dwarka Das Dosi, Aged About 45 Years, R/o E-91, Shastri Nagar, Jodhpur.
3. Ajay Purohit S/o Sh. Prakash Chander, Aged About 48 Years, R/o Near Shiv Mandir, Jalap Mohalla, Jodhpur.

-----Petitioners

Versus

1. State Of Rajasthan, Through Pp

2. Ambaram S/o Sh. Ramlal, R/o Plot No. 8, Ganpati Nagar,
Near Daukiya Hospital Soorsagar Road, Jodhpur.

-----Respondents

S.B. Criminal Writ Petition No. 447/2024

Amba Lal Parihar S/o Late Shri Ram Parihar, Aged About 62
Years, R/o 8, Ganpati Nagar, Near Daukiya Hospital, Soorsagar
Road, Jodhpur.

-----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Director General Of Police, Police Head Quarter, Jaipur.
3. The Commissioner Of Police, Police Commissionerate,
Jodhpur.
4. Dy. Commissioner Of Police (East), Police
Commissionerate, Jodhpur.
5. Station House Officer, Ps Udai Mandir, Jodhpur.
6. Ajay Purohit S/o Shri Prakash Chand, R/o Near Shiv
Mandir , Jalap Mohalla, Jodhpur.
7. Piyush Dosi S/o Dwarka Das Dosi, R/o E-91, Shastri
Nagar, Jodhpur.
8. Mahaveer Dosi S/o Dwarka Das Dosi, R/o E-91, Shastri
Nagar, Jodhpur.

-----Respondents

For Petitioner(s)	:	Mr. C.S. Kotwani Mr. Manoj Choudhary Mr. Yash Rajpurohit
For Respondent(s)	:	Mr. A.R. Choudhary, PP Mr. Vikas Balia, Sr. Adv. asst. by Mr. Hemant Balani Mr. Aditya Sharma

HON'BLE MR. JUSTICE FARJAND ALI

Order

14/03/2024

1. At the outset, learned counsel for the petitioners in the criminal miscellaneous petitions filed under Section 482 CrPC before this Court, Shri C.K. Kotwani, makes an oral prayer for withdrawal of these miscellaneous petitions.
2. Shri Vikas Balia, learned senior advocate representing the respondents in these miscellaneous petitions, vehemently opposes the prayer of learned counsel for the petitioners. He levels serious allegations against the accused petitioner including the connivance of the accused with the police officer.
3. In the devious and anomalous set of facts and circumstances of the matters at hand, it does not sit well with this Court to grant the prayer for withdrawal. This Court would like to examine the facts of the case so as to convince itself whether offences alleged against the accused persons are found proved or not in light of the fact that after conducting thorough investigation, the offences were found proved by an officer of the rank of a DSP but thereafter, the investigation and its result took a one-eighty. It would become more clear in the subsequent paragraphs as to why this Court did not accede to the prayer for withdrawal of the miscellaneous petitions.
4. Aggrieved by the distasteful action of the police and the accused, the complainant preferred a Criminal Writ Petition No. 447/2024, who is also the respondent in few of the miscellaneous petitions filed before us with the following prayers:

a) *The Final Reports filed in all the FIRs of the Petitioner, i.e. FIR No.204/2023, 205/2023, 206/2023, 207/2023, 208/2023 &*

210/2023 filed at the Police Station Udai Mandir, Jodhpur declaring the dispute to be of civil nature may kindly be quashed and the investigation agency may kindly be directed to conduct fresh investigation in these FIRs in fair and transparent manner.

b) The respondent No.1 to carry out re-investigation or de novo investigation from a specialized agency;

c) The appropriate enquiry may kindly be ordered to be initiated against the erring officials for conducting the investigation in most mala fide manner and ignoring the mandate of judgment/order of this Hon'ble Court as well as of the Hon'ble Supreme Court.

5. The brief facts of the case are that in respect of pieces of agricultural lands situated at revenue Village Suthla and Jodhpur, Tehsil and District Jodhpur of which the complainant of all the cases were Khatedar-tenants, there was a dispute between khatedar-tenants and Rajasthan Housing Board for which a lis was pending before this Court.

6. In the meantime, during the pendency of the writ petitions before this Court between the Khatedars and the Housing Board; a Memo of Understanding (MoU) as well as a special power of attorney dated 04.08.2019 and 22.06.2020 got executed between the accused and the complainant on the terms that the accused will provide 25% developed land to the original khatedars and thereafter, the accused would be entitled to use the remaining land as per his choice.

7. It seems that over a period of time, a discord had erupted between the parties which led to lodging of three FIRs bearing

No(s). 179/2023, 180/2023 & 206/2023 at the Police Station Udaimandir, Jodhpur. The accused persons filed three Misc. Petitions under Section 482 Cr.P.C. being S.B. Criminal Misc. Petition No.(s) 2011/2023, 2012/2023 and 2506/2023 before this Court for quashing of the aforesaid FIRs. A Civil Writ Petition No. 6277/2023 had also been submitted on behalf of the accused for clubbing all the FIRs together i.e. FIR No.(s) 179/2023, 180/2023, 204/2023, 205/2023, 206/2023, 207/2023, 208/2023 & 210/2023.

8. During the pendency of the Misc. Petitions, an order dated 08.05.2023 had been passed by a Coordinate Bench of this Court in S.B. Civil Writ Petition No. 6277/2023. The said order is reproduced as under:-

“Issue notice.

Mr. K.S. Rajpurohit, learned Additional Advocate General is directed to accept notice on behalf of the respondents, which he accepts and seeks some time to complete his instructions.

List the matter on 19.05.2023.

In the meantime, no coercive action shall be taken against the petitioners in connection with FIR No.0179/2023, 0180/2023, 0204/2023, 0205/2023, 0206/2023, 0207/2023, 0208/2023 and 0210/2023 (Annex.5).”

9. The said order was challenged by the complainant by way of filing Criminal Appeal No. 3233/2023 arising out of Special Leave to Petition (Crl.) No. 8027/2023 before Hon'ble the Supreme Court which came to be decided vide order dated 16.10.2023. The said order is reproduced herein below:-

Leave granted.

2. *Heard the learned counsel appearing for the parties.*

3. *This is a shocking case of gross abuse of process of law by the second to fourth respondents. At the instance of the appellant, six First Information Reports were registered against the second to fourth respondents. There were two other First Information Reports registered against the same respondents by some other first informants. Two Criminal Miscellaneous Petitions were filed by the second to fourth respondents for quashing the First Information Reports filed at the instance of the other first informants.*

4. *Our attention is invited to the orders passed on the two petitions under Section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC") filed by the second to fourth respondents. The petitions came up before a learned Single Judge of the Rajasthan High Court in April, 2023 in which no interim relief was granted.*

5. *Thereafter, the second to fourth respondents took a very extra ordinary step. On 5th May, 2023 a Writ Petition was filed on the civil side by the second and fourth respondents in which a prayer was made for issuing a writ of mandamus for clubbing the eight First Information Reports and consolidating them into one. The impugned order has been passed in the said Civil Writ Petition on 8th May, 2023. The learned Single Judge of the High Court directed that no coercive action shall be taken against the second to fourth respondents in connection with all eight First Information Reports.*

6. *The appellant has made a very serious allegation by relying upon the then prevailing roster notified by the Chief Justice of the*

Rajasthan High Court. The allegation is that as the learned Single Judge taking up assignment of the criminal matters dealing with Section 482 CrPC did not grant interim relief to the second to fourth respondents in two cases, this method of filing a Civil Writ Petition was invented in which a prayer was made for consolidation of eight First Information Reports. The allegation is that this was done to avoid the roster Judge who had not granted interim relief. Not only that this course was adopted, the second to fourth respondents in the Civil Writ Petition prayed for interim relief directing that no coercive action shall be taken against the second to fourth respondents in relation to all eight First Information Reports. The complainants were not impleaded in the Civil Writ Petitions. Interestingly, both in civil and criminal cases, the same advocate represented the second to fourth respondents.

7. *This is a classic case of forum hunting by the second to fourth respondents. It transpires that notwithstanding the aforesaid relief granted on 8th May, 2023 in the Civil Writ Petition, in the petitions under Section 482 of CrPC for quashing, on 1st June, 2023 the second to fourth respondents persuaded the concerned Bench to grant relief of not taking coercive action against them.*

8. *Thus, this is a case of gross abuse of process of law. We wonder how a Civil Writ Petition for clubbing First Information Reports could be entertained. In the roster notified by the Chief Justice, there is a separate roster for Criminal Writ Petitions. If the Courts allow such sharp practices, the roster notified by the Chief Justice will have no meaning. The Judges have to follow discipline and ought not to take up any case unless it is specifically assigned by the Chief Justice. A Judge can take up a case provided either the cases of that category have been assigned to him as per the notified roster or the particular case is specifically assigned by the Chief Justice. Taking up a case not specifically assigned by the Chief Justice is an act of gross impropriety. Though a Civil Writ*

Petition was filed, the learned Judge ought to have converted into a Criminal Writ Petition which could have been placed only before the roster Judge taking up Criminal Writ Petitions.

9. *We are sure that this conduct of the second to fourth respondents will be considered by the concerned Court taking up petitions under Section 482 CrPC for quashing the First Information Reports.*

10. *This is a fit case where the second to fourth respondents must be saddled with costs. We quantify the costs amount at Rs.50,000/- (Rupees fifty thousand).*

11. *Hence, we allow the appeal by passing the following order:*

(a) We hold that action of filing SB Civil Writ Petition No.6277 of 2023 by the second to fourth respondents was nothing but a gross abuse of process of law and it was a classic case of forum hunting;

(b) Accordingly, we dismiss SB Civil Writ Petition No.6277 of 2023. Therefore, the impugned order does not survive;

(c) We direct the second to fourth respondents to pay costs quantified at Rs.50,000/- (Rupees fifty thousand) to the Rajasthan State Legal Services Authority within a period of one month from today and to produce the receipt before this Court within a period of six weeks from today;

(d) As narrated earlier, the conduct of the second to fourth respondents shall be brought to the notice of the concerned Court which is hearing petitions under Section 482 CrPC filed by the second to fourth respondents; and

(e) We direct the Registrar (Judicial) of the Rajasthan High Court to place a copy of this order in all eight petitions under Section 482 of CrPC filed by the second to fourth respondents for quashing First Information Reports.

12. *The appeal is allowed on the above terms.*

10. Before the outcome of the order dated 16.10.2023 passed by Hon'ble the Supreme Court, the three miscellaneous petitions being 2011/2023, 2012/2023 & 2506/2023 came for consideration before this Court. Vide order dated 01.06.2023, this Court persuaded to pass an interim order particularly with a view to get a permanent burial of the dispute between the parties. The order reads as under:-

1. *Arguments were heard in piecemeal on three occasions and queries were also made from Shri Derawar Singh, ASP who is conducting investigation in the matter. Thereafter, the matter was kept today for further arguments.*
2. *Shri Vinod Sharma and Shri Hemant Balani learned counsel appear for Shri Vikas Balia and Shri Dhirendra Singh, learned Senior Counsels representing the respondents sought time to conclude the arguments.*
3. *Time prayed for is allowed.*
4. *Learned counsel for the petitioner insisted for an interim order by contending that pre-dominantly the matter is of a civil nature. The dispute arose between the parties in relation to an agreement to sale and power of attorney executed in favour of the petitioner by the respective complainants. As per the terms of the agreement, the petitioner was supposed to give 25% developed land to the complainant party and for rest of 75% land, he had been given absolute authority. The petitioner is stick, willing and ready to fulfill his part as agreed between the parties. To show his bonafide, he has furnished an affidavit addressing to this Court deposing therein that he would be abided by the conditions of the agreement, entered in between the parties and shall transfer 25% of the developed land to all the complainants as per agreed terms.*

5. *Considering the submissions and taking into consideration the overall facts and circumstances of the case, this Court deems it appropriate to pass an interim order.*

6. *Thus, till the next effective hearing of the instant Misc. Petitions further proceedings in pursuance to the FIR Nos.206/2023, 179/2023 & 180/2023 registered at the Police Station Udaimandir, Jodhpur shall remain stayed.*

7. *List all these matters on 10.07.2023, as prayed.*

11. In the fullness of time, some more miscellaneous petitions with regard to separate FIR Nos. 204/2023, 205/2023, 207/2023, 208/2023 & 210/2023 were also submitted before this Court and since there was no interim order, therefore, an interim order was passed in favour of the accused restraining their arrest. It is notable that the order staying further investigation was neither intended to be modified nor vacated. It would be worthwhile to mention here that while the arguments were being heard on 01.06.2023, the Investigating Officer Derawar Singh, ASP was very much present before this Court who apprised to this Court that after investigation, offences have been found proved and they were about to arrest and charge-sheet the accused.

12. After passing the interim order restraining arrest of the accused-respondents in all the matters, the miscellaneous petitions were adjourned on several occasions for one or the other reason.

13. By way of filing the criminal writ petition bearing No.447/2024, it is apprised to this Court that during the pendency of the miscellaneous petitions and currency of interim order with regard to stay of further proceedings as well as with regard to

restrain on the arrest of the accused, negative final reports have been submitted by the police before the Court concerned in all the matters which aggrieved the complainant who is the petitioner in Criminal Writ Petition No. 447/2024.

14. After hearing the counsel for the parties, this Court feels that there is a flagrant defiance of orders passed by this Court and the negative final reports have been submitted in a hasty fashion without informing this Court particularly in the circumstances where the matter was *sub judice* and pending consideration before this Court. The obnoxious behavior of the Investigating Officer probably in connivance with the accused has coerced this Court to infer that the negative final reports have been submitted just to frustrate and defeat the purpose and effect of the orders passed by this Court.

15. It is felt that when the matter is pending before this Court for adjudging whether the ingredients essential to constitute the offences alleged are available in the present matter or not or whether the offence is found proved against the accused persons or not, then, in the meantime, cutting through the process by the police officer and circumventing the criminal procedure would be regarded as highly objectionable and condemnable.

16. The closure report has been submitted in a very sly and machiavellian manner just to defeat and impede the course of justice. It is also not comprehensible as to how a factual report claiming that the offences have been found proved came to be flipped into a closure report with negative finding as to the commission of offences by the accused. Dubious circumstances are emerging from the intricate lattice of cases in the present

matter. The conduct of accused of this case has strongly been deprecated by Hon'ble the Apex Court and now, looking to the state of affairs, the apprehension evincing from the assertion of the complainant to the effect that the accused and the investigating officer were in cahoots cannot be ignored. The possibility that the accused somehow succeeded in hampering the investigation cannot be overlooked in the background of the U-turn that the investigation took as well as considering the contemptuous step of the agency of filing the negative final reports in the FIR(s) as mentioned in preceding paragraphs despite of an order of this Court barring the same.

17. In common parlance, it is expected from the investigating agency to wait for the deliverance of the verdict more particularly in cases where interim order restraining further proceedings is operational. More so, when the order staying further investigation was passed in the presence of the officer of the agency. Prima facie, this seems to be contemptuous. There was no hurry for the officer to file the closure report without informing the court where the matter was pending consideration.

18. A cursory look over the scene as well as consideration of the aspersions of the complainant raised to the effect that the accused and the Investigating Officer were in an alliance are persuading this Court to infer that the possibility of unfair investigation or manipulation cannot be ignored.

19. Although this court is not giving any final opinion in this regard and keeping it pending for consideration until examination of the case diary and the report u/s 173 CrPC as well as the factual report that shall be filed by the newly appointed

officer in the matter, however, as on date, the objectionable way of submission of final report before the magistrate pending the disposal of the miscellaneous petitions before this court, more particularly with an interim order of stay on investigation in place cannot be condoned and it is felt that the matter should be examined by this court.

20. It is, therefore, ordered as under:

(1) The learned Metropolitan Magistrate before whom the negative final reports filed in the FIR(s) particulars of which have been given in the prayer clause of Criminal Writ Petition No.447/2024 have been submitted by the police shall make arrangements for sending back the case diaries and the entire material to the Commissioner of Police, Jodhpur within a period of ten days from the date of receipt of a copy of this order.

(2) After receiving the same, the Commissioner of Police, Jodhpur, shall depute a responsible police officer, not below the rank of Additional Superintendent of Police, to conduct further investigation under Clause (8) of Section 173 Cr.P.C.

(3) The Investigating Officer whereafter shall collect all the relevant documents and shall examine whether the opinion of the previous Investigating Officer whereby the charges were found proved against the accused is accurate or the opinion of the Investigating Officer that succeeded him/her and submitted the closure report in the negative holds more merit. The Investigating Officer shall examine the two and determine which one is correct as per him/her and submit a detailed factual report in clear terms for perusal of this Court before the next date of hearing.

21. The investigating Officer who reached onto a conclusion of closure report and the S.H.O.'s who prepared the negative final report and submitted before the Court of Magistrate, shall furnish an explanation before this Court as to why they may not be punished for their contemptuous behavior and for that why a contempt proceeding may not be initiated against them.

22. List the matter on 29.04.2024.

23. In the peculiar facts and circumstances of the case, it is further ordered that the accused, who are the petitioners in all the miscellaneous petitions, shall not be arrested in connection with all the FIR(s) referred above till the next date of hearing.

(FARJAND ALI),J