

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2223 OF 2013

1. Smt. Rambhaben Shamji Shah
Age:- 67 Years,
Indian inhabitant of Mumbai,
Residing at 4th Floor,
Ajanta Apartment. S. V. Road,
Dahisar (East), Mumbai 400 068.

2. Mr. Dinesh Shamji Shah,
Age :- 43 Years,
Indian inhabitant of Mumbai,
Residing at 4th Floor,
Ajanta Apartment. S. V. Road,
Dahisar (East), Mumbai 400 068.

... Petitioners

V/s.

1. State of Maharashtra.
Through Dahisar Police Station.

2. Dattatraya Mukund Bhoir,
C/309, Bhairavi Apartment,
Bharucha Marg, Dahisar (E),
Mumbai – 40 068.

3. The Secretary,
S.T. Caste Scrutiny Committee
Having Office at Vartak Nagar,
Thane (West).

... Respondents

Dr. Abhinav Chandrachud a/w Mr. Saurabh Utangale i/b Utangale & Co. for
the Petitioners.

Ms. Dhanalaxmi Krishnaiyer, APP for the Respondent-State.

Mr. Vishal Patil a/w Mr. Afsar Ansari for the Respondent No. 2.
Mr. Nilesh Salunke, attached to the Dahisar Police Station is present.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 17th JULY 2026.

PRONOUNCED ON : 22nd September 2026.

JUDGMENT :-

1) By the present petition filed under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973 (for short, “CrPC”), the Petitioners seek to quash and set aside the impugned FIR No. 117 of 2013 dated 13th March 2013 registered with the Dahisar Police Station under Section 420 of the Indian Penal Code (for short, “IPC”) read with Sections 3(1)(iv) and (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “SC and ST Act”) at the instance of Respondent No. 2.

2) Heard Dr. Abhinav Chandrachud, learned Advocate for the Petitioners, Ms. Dhanalaxmi Krishnaiyer, APP for the Respondent-State and Mr. Vishal Patil, learned Advocate for the Respondent No. 2.

3) The case of the prosecution as alleged is as under:-

3.1) The FIR has been lodged by Mr. Dattatray Mukund Bhoir on 13th March 2013. It is alleged by Respondent No. 2 that, the land bearing CTS No. 1041 A, Survey No. 45, Hissa No. 1, situated at Bharucha Road, Village Dahisar, Taluka Borivali, admeasuring 3123.10 sq. mtrs., is his ancestral

property. That, out of the said land, an area admeasuring 877.95 sq. mtrs. was conveyed to M/s. Girnar Constructions by conveyance deed dated 29th December 2001. It was allegedly projected to the family of Respondent No. 2 that, there would be huge profit. That, the conveyance deed was registered. The same was produced by Respondent No. 2 along with the First Information Report (for short, "FIR").

3.2) It is alleged that, against the conveyance deed, partners of Girnar Constructions, i.e. Shamji Shah and Naginbhai Narsandas Mehta, had given an amount of Rs. 3,00,000/- as consideration. That, 3 flats of 740 sq. ft. and one flat of 400 sq. ft. were to be given to the Respondent No. 2 and family. That, in respect of one flat of 740 sq. ft., construction cost of Rs. 9,00,000/- was decided to be given by the family of Respondent No. 2 and other legal heirs. That, out of the said amount, Rs. 2,50,000/- in cash and Rs. 50,000/- were given by cheque drawn on Dena Bank, Dahisar East Branch.

3.3) That, M/s. Girnar Constructions proceeded to construct a building by the name Shivam Apartment. That, during the said period, Naginbhai Mehta expired on 30th November 2007 and Shamjibhai Shah expired on 8th September 2011. After the death of two partners, the construction of building was taken over by the legal heirs of Shamjibhai Shah, i.e. Smt. Rambhaben Shamji Shah (wife) i.e. Petitioner No. 1, Mr. Dinesh Shamji Shah (son) i.e. Petitioner No. 2, and other partners, viz. Vinubhai Nanabhai Royala, Kanubhai J. Chaganani, Thakarsibhai Sutaria, Dinesh P. Soni, Harish L. Makhela and

Ramdev Bahadursing Gohil. That, the construction of building was completed in the year 2012.

3.4) After the building was completed, Respondent No. 2 and his family sought possession of the said flat from Dinesh Shah i.e. Petitioner No. 2. Respondent No. 2 was allegedly informed that, the occupation certificate of the building was not yet available and, therefore, possession could not be given. That, therefore the Respondents felt cheated. Other entities on the first floor were given possession, i.e. a Gym by the name of Maniya, a stationery shop by the name of Selection on the ground floor, which occupied three shops, and other 5 to 6 families who have come to reside in the said building.

3.5) It is further alleged that, in front of the said land, the family of Respondent No. 2 had a land admeasuring 710 sq. mtrs., which was reserved for a recreation ground, and that the said land was given to Shamjibhai and Naginbhai to accommodate the labourers who were working on the construction of Shivam Apartment. That, huts were built for the labourers, with an assurance that after the completion of construction of Shivam Apartment, the said huts would be demolished.

3.6) After the death of Shamjibhai in the year 2011, his son Dineshbhai and other partners started looking after the business transactions of Girnar Constructions. That, they converted the huts into permanent constructions, i.e. shops, and that, for undertaking the said constructions, they have submitted forged documents in the office of Municipal Corporation and

the Collector. That the said area was to be handed over to the Corporation for a recreation ground and that there was a violation of the law. It is further contended that, Respondent No. 2 and his family are of Malhar Koli Caste. That, the accused persons made Respondent No. 2 and his family believe that they would provide Respondent No. 2 and his family flats in lieu of their land and by preparing a conveyance deed to that effect, the accused persons committed financial fraud upon Respondent No. 2 and his family by taking Rs.2,50,000/- in cash and cheque of Rs. 50,000/-. That accused person committed fraud against Respondent No. 2 and Government by illegally constructing permanent shops on Respondent No. 2 and his family's land which was reserved for RG (recreational ground) and by submitting false and fabricated document before concerned authorities. On the aforesaid basis, the FIR came to be lodged.

4) Dr. Abhinav Chandrachud, learned counsel appearing for the Petitioners submitted that:-

4.1) The offence of cheating cannot be made out against the Petitioners as the Petitioners were admittedly not concerned nor present at the inception of the contract nor parties to the conveyance deed or development agreement. That, before the conveyance deed, a development agreement was executed on 29th September 1998 and thereafter the registered conveyance deed was executed on 29th December 2001. That, the conveyance deed was executed by the husband of Petitioner No. 1 and father of Petitioner No. 2.

4.2) That, for establishing the offence of cheating under Section 420 of the IPC, it is necessary for Respondent No. 2 to show that the accused had fraudulent or dishonest intentions and that there was fraudulent inducement at the inception of the contract. That, the conveyance deed dated 29th December 2001 as well as the development agreement of 1998 was executed by the legal heirs of Rama Ragho Bhoir in favour of late Shamji Shah in the year 2001. That, the present Petitioners became partners of Girnar Construction only in the year 2011 after the death of Shamji Shah on 7th September 2011. That, there is no allegation that the Petitioners were present when the contracts were executed or that they were responsible for the execution of the contracts.

4.3) The concept of vicarious liability unless specified by a statute is unknown to criminal law. That, neither Section 420 of the IPC nor Sections 3(1)(iv) and (v) of the SC and ST Act create any such vicarious liability. That, the parties had executed at the first instance a development agreement and then a registered conveyance deed dated 29th December 2001. That, Section 3(1)(iv) of the SC and ST Act can be invoked when the person wrongfully occupies or cultivates any land owned by, allotted to, or notified by any competent authority to be allotted to a member of the SC and ST or gets the land allotted to him transferred. Further, Section 3(1)(v) penalises the person who wrongfully dispossesses a member of the SC and ST from his land or premises or interferes with the enjoyment of rights over the land, premises or

water. That, the basic and essential ingredient to invoke both the sections is that the occupation or dispossession must be wrongful. That, in the present case, the parties have acted is under the registered development agreement dated 29th September 1998 and registered deed of conveyance dated 29th December 2001. That, the development agreement or deed of conveyance have not been challenged.

4.4) Mere dispute or the issue over the property or dispute in respect of an agreement between the parties, one of whom happens to belong to SC and ST, does not attract or become an offence under the SC and ST Act.

4.5) The vendors, including Respondent No. 2 and legal heirs of late Rama Ragho Bhoir have executed a declaration-cum-indemnity dated 1st January 2002 expressly declaring that they are not Adivasi and that the said property never belonged to any Adivasi. That, the bona fide certificate issued by the Vidya Mandir Dahisar Marathi School records the caste of Respondent No. 2 as Hindu Kunabi. That, the claim of belonging to the Scheduled Caste community for the first time was made in Advocate's notice dated 9th May 2012, nearly after 15 years after the transaction. That, none of the 7/12 extracts refer to Respondent No. 2 being an Adivasi. That, in view thereof, knowledge cannot be attributed to late Shamji Shah or to the Petitioners that the vendors belonged to SC or ST community, nor any act was committed on that ground.

4.6) The allegations in respect of labour room, huts cannot attract the

provisions of Sections 3(1)(iv) and (v) of the SC and ST Act. The FIR would indicate that, in fact it is the case of Respondent No. 2 himself that, possession of the said land was handed over to Girnar Construction Co. In view thereof, it can never be said that Respondent No. 2 or his family were wrongfully dispossessed within the meaning of Sections 3(1)(v) of the SC and ST Act. Further in view of the document on record and pleadings nor can it be said that the Girnar Construction Co. wrongfully occupied the property within the meaning of Section 3(2)(iv) of the SC and ST Act. That, the said huts have been removed when the Corporation issued the notice and the Civil Court passed an order for demolition. The said issue now stands settled and also resolved by undertaking demolition of the structures in accordance with the orders.

4.7) The FIR has been filed at a belated stage. There is no explanation given for the delay in filing the FIR. Reliance was placed on the judgment in the case of *Kishan Singh v. Gurpal Singh*, reported in (2010) 8 SCC 775, to submit that, in the absence of any plausible explanation for delay in registration of the FIR, the same would be fatal. That, the same is indicative of the fact that the complaint is an afterthought and based on the coloured version of the events.

4.8) Respondent No. 2 has, in fact, settled the disputes with the Petitioners. Respondent No. 2, in his communication/statement dated 10th November 2017 given to the concerned Police Station, has himself stated that,

he has settled his dispute with the Petitioners. That, in view of the present facts, it is clear that the offence arises out of a transaction which is civil and commercial in nature. That, the parties have resolved their disputes and continuation of criminal proceedings in such facts would be an exercise in futility.

5) Mr. Vishal Patil, learned Advocate for Respondent No. 2 submitted that :-

5.1) The FIR makes out a prima facie case against the Petitioners. That, the Petitioners were denied possession on the ground of non-receipt of the occupation certificate when other people were granted possession. That, the conveyance deed was executed by misleading Respondent No. 2 and other heirs. That, an offence under Section 3(1)(iv) and (v) of the SC and ST Act is clearly made out. That, the Petitioners have been in illegal occupation and used the premises belonging to Respondent No. 2 for labour camp. The Petitioners have then illegally and without permission constructed unauthorised shops. That, Respondent No. 2 has been cheated inasmuch as the predecessor of Respondent No. 2 was given assurance of huge profit. Considering that the allegations are in respect of the SC and ST Act, what can be seen is only the FIR.

6) Ms. Dhanalaxmi Krishnaiyer, learned APP appearing for the State adopted the arguments advanced by Mr. Vishal Patil, learned Advocate for the Respondent No. 2.

7) Before considering the facts of the present it is necessary to refer to the certain judgments of the Hon'ble Supreme Court.

7.1) The Hon'ble Supreme Court in the case of *Hira Lal Hari Lal Bhagwati v. CBI*, reported in (2003) 5 SCC 257, while referring to the essential ingredient of Section 420 has in paragraph 40 observed that :-

“40. It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed....”

7.2) The Hon'ble Supreme Court in the case of *Uma Shankar Gopalika v. State of Bihar*, reported in (2005) 10 SCC 336, in paragraph 6 has observed that every breach of a contract/agreement cannot amount to cheating and that a prima facie dishonest inducement at inception is a essential ingredient to make out a offence of cheating. The relevant portion of paragraph 6 reads as under :-

“6. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC.”

7.3) A useful reference may be made to the observations made by the Hon'ble Supreme Court in the respect of the powers and ambit of the High Court's under Section 482 of the CrPC while dealing with an application seeking quashing of a complaint which is based on the offence under the SC and ST Act. The Hon'ble *Supreme Court in the case of Gulam Mustafa v. State of Karnataka*, reported in (2023) 18 SCC 265 has observed that :-

“34. Insofar and inasmuch as interference in cases involving the SC/ST Act is concerned, we may only point out that a three-Judge Bench of this Court in Ramawatar v. State of M.P. [Ramawatar v. State of M.P., (2022) 13 SCC 635] , has held that the mere fact that the offence is covered under a “special statute” would not inhibit this Court or the High Court from exercising their respective powers under Article 142 of the Constitution or Section 482 of the Code, in the terms below : (SCC pp. 641-42, paras 16-17)

“16. Ordinarily, when dealing with offences arising out of special statutes such as the SC/ST Act, the Court will be extremely circumspect in its approach. The SC/ST Act has been specifically enacted to deter acts of indignity, humiliation and harassment against members of Scheduled Castes and Scheduled Tribes. The SC/ST Act is also a recognition of the depressing reality that despite undertaking several measures, the Scheduled Castes/Scheduled Tribes continue to be subjected to various atrocities at the hands of upper castes. The Courts have to be mindful of the fact that the SC/ST Act has been enacted keeping in view the express constitutional safeguards enumerated in Articles 15, 17 and 21 of the Constitution, with a twin-fold objective of protecting the members of these vulnerable communities as well as to provide relief and rehabilitation to the victims of caste-based atrocities.

17. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily private or civil in nature, or where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the SC/ST Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a “special statute” would not refrain this Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482 CrPC.”

(emphasis supplied)

7.4) The Hon’ble Supreme Court in the case of *Karuppudayar v. State*, reported in 2025 SCC OnLine SC 215 has observed that:-

“17. No doubt, that the power under Section 482 of the CrPC is required to be exercised sparingly and with circumspection and that too in the rarest of rare cases. It is equally settled that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. However, the court would be justified in exercising its discretion if the case falls under any of the clauses carved out by this Court in Paragraph 102 in the case of Bhajan Lal (supra)

18. We find, as already observed herein, that the allegations made in the FIR, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute an offence either under Section 3(1)(r) or under Section 3(1)(s) of the SC-ST Act. We are of the considered view that the case would fall under the first category, listed by this Court in Paragraph 102 in the case of Bhajan Lal (supra).

19. On a perusal of the order of the High Court, we find that the

High Court has not at all considered this aspect of the matter though it was strenuously argued on behalf of the petitioner before the High Court (Appellant herein) that the allegations made in the FIR do not make out a case that the offence is committed in public view. The High Court did not even deal with the said contention, leave aside considering the same.”

8) Perused the entire record. Perusal of the FIR would indicate that the documents in question, i.e. development agreement dated 29th September 1998 and the conveyance deed dated 29th December 2001, are both registered documents. The Respondent No. 2 himself has submitted the copy of the conveyance deed with the FIR. The perusal of the conveyance deed would indicate that, the same has been executed by and between the Respondent No. 2 and other legal heirs of late Rama Ragho Bhoir and M/s Girnar Construction Company, a registered partnership firm of which Mr. Shamji Shah, i.e. the husband of Petitioner No. 1 and father of Petitioner No. 2, was a partner. Under the said registered documents possession of the land was handed over to Girnar Construction Co. and permission was granted to develop and construct the building based on and pursuant to the agreement and understanding between the parties which is specifically enumerated in the said development agreement and conveyance deed.

9) Perusal of the said conveyance deed would indicate that, it makes a specific reference that the common ancestor of Respondent No. 2, i.e. Rama Bhoir, had acquired the property in question vide tenancy certificate dated 6th October 1965 under the Bombay Tenancy and Agricultural Land Act. That, the

required permissions from the Collector, Mumbai Sub-urban Division, were obtained on 4th January 2000 for the sale of the property in favour of Shamji Shah, who is a partner of Girnar Constructions. The Sub-Divisional Officer, Mumbai, had issued the letter dated 14th September 2000 and granted permission in favour of vendors, namely Mukund Rama Bhoir, Narayan Rama Bhoir and Gangabai Ganpat Bhoir, to sell and dispose of the said plot of land to Shamji Shah. The vendors had also obtained corrigendum from the Additional Collector and CA (ULC), Greater Mumbai, dated 22nd October 1999, and in view thereof, the vendors were entitled to sell and dispose of the said plot of land. The record indicates that, against the sale of the land, the vendors were allotted certain flats. The said conveyance deed is a registered document. The record also indicates that the Petitioners are not party to the said document.

10) On a prima facie basis, the FIR would indicate that, there is no inducement which has been or could have been offered by the Petitioners. The Petitioners were not party to the conveyance deed or the development agreement. In such view of the matter, it prima facie appears that the offence of cheating under the IPC cannot be invoked against the Petitioners.

11) As regards the offences under Section 3(1)(iv) and (v) of the SC and ST Act, the basic and most essential and foundational ingredient of the offences is “wrongful occupation or cultivation of land” or “wrongful dispossession” of the person belonging to or being a member of a Scheduled

Caste or a Scheduled Tribe. In the present case, the FIR itself would indicate that, Respondent No. 2 has relied upon the registered conveyance deed. As noted herein, the conveyance deed specifically mentioned the permissions taken by the parties and the consideration for the said transaction. In such view of the matter, it cannot be said that the Respondent No. 2 and/or the other heirs of late Rama Ragho Bhoir were wrongfully dispossessed from the said land or that Girnar Construction wrongfully occupied the land. As regards the allegations in respect of the other plots on which labour hutments were constructed, it is the case of Respondent No. 2 himself that the permissions were given to construct the said labour hutments. Prima facie the occupation and use of the lands including the land for putting up labour huts was permitted. There was a permissive user. In the facts of the present case it prima facie appears that there is no act of wrongful occupation or wrongful dispossession.

12) It prima facie appears that a commercial and contractual dispute in respect of development of property, based on registered documents has been attempted to be converted into criminal proceedings. I have also noted that the Petitioner were not party to the agreement or the negotiation and have come into the picture only in the year 2011.

13) The Society had also filed a complaint with the Dahisar Police Station on 10th November 2017, complaining of the fact that Respondent No. 2 had broken the locks and entered into the flats. Further, the Petitioners have

filed on record an additional affidavit dated 1st December 2025, wherein the Petitioners have annexed the copy of the statement of Respondent No. 2 dated 10th November 2017, wherein Respondent No. 2 has inter alia stated that the issue between Respondent No. 2 and the Petitioners has been settled and that he has no complaint against the Petitioners. Statement of the Petitioner No. 2, Dinesh Shamji Shah, has also been recorded, wherein the Petitioner also stated that the issue between Respondent No. 2 and the Petitioners has been settled. The said events have not been disputed by the Advocate for the Respondent No. 2. In fact the Advocate for Respondent No. 2 has on instruction, stated that possession of the flats is with the Respondent No. 2. The record prima facie indicates that the possession of the lands was handed over under a registered conveyance deed for consideration and on certain terms and conditions. In respect of the other land, it prima facie appears that the user was permissive. The parties to the agreement have acted upon and in accordance with the agreements and understanding. Prima facie no case under the SC and ST Act is made out. The facts of the matter at the highest may be a case of a breach of the agreement or a delayed performance of the obligations, but not a case of cheating or any offence under the SC and ST Act.

14) Considering the facts and circumstances of the present case, I am of the opinion that no case has been made out under Section 420 of the IPC read with Section 3(1)(iv) and (v) of the SC and ST Act. I am of the prima

facie opinion that this is a fit case to exercise power under Section 482 of the CrPC.

15) Considering the facts of the present case and for the aforesaid reasons, I am of the considered view that, the Petitioners have made out a prima facie case for this Court to exercise its inherent powers under Section 482 of the CrPC to prevent the abuse of the process of law and to ensure that the ends of justice are met. Considering the peculiar facts of the present case, in my considered view, the present case fits in category 1 as laid down by the Hon'ble Supreme Court in the case of *State of Haryana & Ors. Vs. Bhajan Lal & Ors.*, reported in *1992 Supp (1) SCC 335*.

15) In view thereof, petition is allowed in terms of prayer clause (b).

(RANJITSINHA RAJA BHONSALE, J.)

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