

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

WRIT PETITION NO.1284 OF 2013

- | | | |
|-----------------------------------|---|------------------|
| 1. Mr. Sham Ganpat Chougule |] | |
| Age 79 years, Occ : Business, |] | |
| R/at. 69, Champagne House, |] | |
| Worli Sea Face, Worli, |] | |
| Mumbai – 400 030. | | |
| 2. Mr. Ranjit Sham Chougule |] | |
| Age 39 years, Occu: Business, |] | |
| R/at. 69, Champagne House, |] | |
| Worli Sea Face, Worli, |] | |
| Mumbai – 400 030. |] | |
| 3. Mr. Sohrab Rustom Framjee |] | |
| Occu: Retired, |] | |
| Mount Pleasant Road, Malabar |] | |
| Hill, Mumbai – 400 006. |] | |
| 4. Mr. Girish Vijayanand Kirkinde |] | |
| Age 49 years, Occu: Service, |] | |
| Santosh Mata Mandir, |] | |
| Kalyan – 421 301. |] | |
| 5. Mr. Dilip Sadashiv Pradhan |] | |
| Age 63 years, Occu: Service, |] | |
| R/at. Indage House, 82, |] | |
| Annie Besant Road, Worli, |] | |
| Mumbai – 400 018. |] | ... Petitioners. |

V/s.

- | | | |
|-----------------------------------|---|------------------|
| 1. State of Maharashtra |] | |
| (Valchand-Nagar, Police Station). |] | |
| 2. Mr. Rohit Shivaji Jadhav |] | |
| Age 30 years, Occu: Service, |] | |
| R/at. Gholapwadi, Tal. Indapur, |] | |
| Dist. Pune. |] | ... Respondents. |

**WITH
WRIT PETITION NO.2415 OF 2017**

- | | | | |
|----|-------------------------------------|---|------------------|
| 1. | Rohit Shivaji Jadhav |] | |
| | Age : 34 years, Occu: Service |] | |
| | R/at. Gholapwadi, Tal. Indapur, |] | |
| | District : Pune |] | |
| 2. | Indapur Taluka Grape Processing and |] | |
| | Winery Co-op. Society Ltd |] | |
| | having office at Birangudwadi, |] | |
| | Tal. Indapur, Dist. Pune |] | ... Petitioners. |

V/s.

- | | | | |
|----|---|---|--|
| 1. | State of Maharashtra |] | |
| | (at the instance of Valchand Nagar) |] | |
| | Police Station, Pune in C.R. No.88/2011 |] | |
| 2. | Sham Ganpat Chougule |] | |
| | Age : 83 years, Occu: Business |] | |
| | R/at.69, Champagne House, |] | |
| | Worli Sea Face, Worli, Mumbai – 400 030 |] | |
| 3. | Ranjit Sham Chougule |] | |
| | Age : 43 years, Occu: Business |] | |
| | R/at. 69, Champagne House, |] | |
| | Worli Sea Face, Worli, Mumbai – 400 030 |] | |
| 4. | Sohrab Rustom Framjee |] | |
| | Occu : Retired |] | |
| | R/at. 69, Anita Building, |] | |
| | Mount Pleasant Road, Malabar Hill |] | |
| | Mumbai – 400 006 |] | |
| 5. | Girish Vijayanand Kirkinde |] | |
| | Age : 54 years, Occu: Service |] | |
| | R/at. Heramb Society, Near Santosh |] | |
| | Mata Mandir, Kalyan – 421 301 |] | |
| 6. | Dilip Sadashiv Pradhan |] | |
| | Age : 67 years, Occu: Service |] | |

R/at. Indage House, 82, Annie]
Besant Road, Worli, Mumbai – 400 018] ... Respondents.

Mr. Anurag R. Mishra a/w. Adv. Ankit Trivedi, Adv. Arnab Roy i/by Adv. Rohan V. Nahar for the Petitioners in WP/2415/2017 and for Respondent No.2 in WP/1284/2013.

Mr. Ajit Kenjale a/w. Adv. Sohil Gulabani, Adv. Sai Rajendra Kadam, Adv. Azaruddin A. Khan for the Petitioner in WP/1284/2013 and for Respondent No.2 in WP/2415/2017.

Smt. M. H. Mhatre, APP for the Respondent No.1-State in both Petitions.

Mr. A.S. Kaloskar, Police Constable, Walchandnagar Police Station, present.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 16th April, 2026.

PRONOUNCED ON : 30th April, 2026.

Judgment (Per : Kamal Khata, J) :-

1) By the Writ Petition No.1248 of 2013 filed under Article 226 of the Constitution of India, the Petitioners seek to set aside the investigation initiated against the Petitioner in Crime Register No. 88 of 2011 registered at Valchand-Nagar Police Station, Baramati Pune.

1.1) On the other hand, by Writ Petition No.2415 of 2017, the Petitioners seek transfer of the investigation of CR number 88 of 2011 to CID Pune or any other investigation agency.

2) For ease of reference, the Petitioners in Writ Petition No. 1284 of 2013 are referred to as the “Chougule and ors” and the Petitioner No.1 – Rohit Shivaji Jadhav in Writ Petition No.2415 of 2017 is referred to as “Jadhav” and Petitioner No. 2 - Indapur Taluka Grape Processing and

Winery Co-op. Society Ltd. or Indapur Taluka Draksha Prakriya and Winery Sahakari Sanstha Maryadit as described in the Agreement, is referred to as “Indapur Winery Society” in the foregoing paragraphs.

3) Jadhav on behalf of Indapur Winery Society lodged an FIR with Indapur Police Station for offences punishable under Sections 407, 320 read with Section 34 of the Indian Penal Code, 1860 (‘IPC’) against Chougule and ors. on 25th May 2011 and upon being registered was referred to as CR No.88 of 2011. The relevant contentions recorded in the FIR is as follows:

3.1) The Indapur Winery Society consists of farmers from Indapur Taluka to produce grapes, fruit and vegetables in the said area. They formed a Society and started grape processing and winery unit. In 2008, Chougule and ors. approached them and requested to provide them of the wine and agreed to offer them a good rate. Since the Indapur Winery Society had taken several loans, they agreed to supply of wine to Champagne Indage Limited of which Chougule and ors were directors. They entered into an Agreement dated 19th March, 2008.

3.2) As per the Agreement dated 19th March 2008, all the wine produced by the Indapur Winery Society would be lifted by the Company Champagne Indage Limited. (CIL) on or before 30th November every year and latest by 31st December. Under the Agreement, CIL would pay 50% of the amount in advance and the balance within 45 days from the date of lifting the wine. Having lifted the entire stock of wine namely 32,000 liters

for Rs.42,81,567/- from the Indapur Winery Society, CIL did not pay a single penny either as advance or even thereafter. According to the Jadhav, Chougule and ors. had entered into such an Agreement with an ulterior motive and malafide intention to cheat the Indapur Winery Society. Jadhav alleged that, with an intention to cheat, the Indapur Winery Society, Chougule and ors. changed the name of CIL and also disposed of all entire stock lifted from the Indapur Winery Society.

4) Mr. Mishra, learned Advocate for Chougule and ors., submitted that the FIR, as it stands, fails to disclose the specific role attributable to each of the accused in commission of the alleged offence. According to him, the allegations are vague and devoid of particulars.

4.1) He submitted that, a mere breach of the terms of the Agreement, without anything more, cannot give rise to criminal liability in the absence of material indicating dishonest or fraudulent intent from inception. In the absence of such material, the offence of cheating under Section 420 of the Indian Penal Code, 1860 ('IPC') is rendered nugatory.

4.2) In support of his submission, reliance was placed upon the judgment of Hon'ble Supreme Court judgment in the case of *Vesa Holdings Private Limited & Anr. vs. State of Kerala & Ors.* reported in (2015) 8 SCC 293 to contend that the allegations in the complaint must clearly disclose the ingredients of the offence of cheating to sustain an FIR.

4.3) Placing further reliance on the decision in *State of Haryana vs.*

Bhajan Lal reported in *AIR 1992 SC 604*, he submitted that the offences of criminal breach of trust and cheating, arising out of the same transaction, are distinct and cannot be invoked mechanically together. He submitted that cheating requires dishonest inducement at the inception, whereas criminal breach of trust requires entrustment followed by misappropriation.

4.4) He submitted that, neither does Jadhav specifically allege, nor does the FIR disclose, that the wine was entrusted to Chougule and ors. who thereafter misappropriated it. Although it is Jadhav's case that Chougule and ors. had an intention to cheat Indapur Winery Society from the very beginning the Agreement with CIL proves that the allegations are *ex- facie* contradictory. Consequently, no offence punishable under Section 407 of the IPC is made out.

4.5) He further submitted that, the FIR also fails to disclose any material to attract Section 34 of the IPC, as there are no allegations indicating that the accused acted with a common intention.

4.6) He submitted that, the Agreement dated 19th March, 2008 was executed between Champagne Indage Ltd. ('CIL') and Indapur Winery Society. Therefore, the FIR ought to have clearly specified the role of each director or office bearer. It must also necessarily disclose as to how each of them was responsible for the day-to-day affairs of CIL to fasten the liability upon them. He submitted that, the entire complaint was imaginary.

4.7) In this context, he relied upon the Hon'ble Supreme Court

decision in the case of *Maksud Saiyed vs. State of Gujarat & Ors.* reported in (2008) 5 SCC 668 to submit that vicarious liability cannot be presumed in the absence of specific allegations.

4.8) He further pointed out that, the FIR named one Mr. Joseph Bain D'souza as one of the accused who alongwith others took delivery of 32,000 litres of wine from Indapur Winery Society. However, Joseph D'souza had expired on 2nd September, 2007 which is prior to the date of the Agreement between CIL and Indapur Winery Society itself. This, according to him, clearly demonstrates the mechanical and unreliable nature of the allegations.

4.9) He further submitted that, although the FIR was registered on 25th May, 2011 no charge-sheet is filed till date. Consequently, no *prima facie* case is made out and therefore, the Petition be allowed.

5) *Per contra* Mr. Kenjale, learned Advocate (for Petitioner in Writ Petition No.2415 of 2017 and for Jadhav in Writ Petition No.1284 of 2013) submitted that, the Indapur Winery Society had entrusted the property valued at Rs.43 lakhs to the accused, who, by their acts, cheated them and consequently caused serious financial distress to Indapur Winery Society and its members.

5.1) He further submitted that, despite registering an FIR with the Indapur Police Station as early as on 25th May, 2011 (bearing C.R. No.88 of 2011) for offences punishable under Sections 407, 420 read with Section

34 of the Indian Penal Code, and despite a further representation made by Jadhav on 6th April, 2017, the Respondents failed to take any action.

6) We have heard both the Advocates and have perused the entire record carefully.

6.1) We find merit in the submissions of the Petitioners-Chougule and ors.. A plain reading of the FIR reveals that it lacks the particulars that are required to sustain the same. We find that it does not specify the role of each of the accused and nor does it disclose any criminal intent to cheat Indapur Winery Society. That the goods and the wine were delivered to the company-CIL as per the Agreement executed between them. There was no material to show misrepresentation at the inception or entrustment of the said goods which were misappropriated.

7) It is further pertinent to note that, Jadhav has suppressed several material facts and documents. An important communication dated 12th June, 2010 that was suppressed clearly indicates that Indapur Winery Society had agreed to support the scheme floated to help the company revive from the financial crises. Moreover, Indapur Winery Society's Advocate had in his Demand notice dated 11th April 2011 deliberately made false statement that they were not aware in the change of name of CIL and that the earlier demand notice dated 3rd December 2010 was therefore issued in its earlier name, namely CIL. The said statement is entirely false to the knowledge of Jadhav in as much as the letter dated 12th June, 2010

addressed by Indapur Winery Society was addressed to Indage Vintners Limited (IVL) the new name of CIL.

8) Subsequent correspondence by IVL dated 24th May 2011 addressed to the Advocate for Indapur Winery Society, which is also suppressed, further indicated that the company had offered to return of the goods to Indapur Winery Society, to which there was no response.

9) In our view, the suppression of this material facts, would ex facie, disentitle Jadhav or Indapur Winery Society to maintain a criminal complaint against Chougule and ors. (*K.D. Sharma vs. Steel Authority of India* reported in (2008) 12 SCC 481.)

10) In this backdrop it would be profitable to follow the judgement of the Hon'ble Supreme Court in the case of *State of Haryana & Ors. vs. Bhajanlal & Ors* reported in 1992 Supp (1) Supreme Court Cases 335. In paragraph No.102 it held as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give

an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with

an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11) In the present case, a closer examination of the FIR also reveals that one of the directors namely, Mr. Girish Kirkinde had already resigned from the company way back on 2nd September 2009 and therefore could not have been a party to the crime accused in the FIR.

12) The fact that the FIR was registered against persons who had long expired or resigned itself demonstrates lack of material and due application of mind. It also suggests that the criminal process is invoked with a clear intent to pressurize the directors, for recovery of dues arising out of a contractual transaction. This clearly demonstrates that the FIR is wholly unfounded and devoid of merit.

13) According to us, sub para (1) & (7) of paragraph No.102 of Bhajanlal's case (supra) are squarely applicable to the case in hand. In that view of the matter, the Petition deserves to be allowed.

14) In view of Writ Petition No.1284 of 2013 being allowed, the Writ Petition No. 2415 of 2017 which seeks a direction to transfer the investigation of C.R. No.88 of 2011 to CID, Pune or any other Investigating Agency must necessarily fail and is hereby dismissed.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)