

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

CRIMINAL WRIT PETITION NO.4179 OF 2019

1. M/s. Shethia Associates,
A registered partnership firm, having its
Office at Office No.3, Riddhi Siddhi
Apartments, Tilak road, Ghatkopar (E)
Mumbai 400 077
2. Ashok Savani,
Age 55 years, Occ, Business, Partner
Of M/s. Shethia Associates, a registered
partnership firm, having its
Office at Office No.3, Riddhi Siddhi
Apartments, Tilak road, Ghatkopar (E)
Mumbai 400 077

... Petitioners

Vs.

1. State of Maharashtra
2. Pradip Mansukhlal Mehta,
Age 54 years, Occ. Business, Indian
Inhabitant of Mumbai, residing at 303,
Swastik Apartment, Garden Lane,
L.B.S. Marg, Ghatkopar (W)
Mumbai 400 086

... Respondents

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WAHULE

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Mr. Kapil Dave, Advocate for the Petitioner.

Mr. Ramesh Jadhav, Advocate for Respondent No.2.

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

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 24th JULY 2026.

PRONOUNCED ON : 5th OCTOBER, 2026

JUDGMENT.:

1. By the present Petition filed under Article 227 of the Constitution

of India and Section 482 of the Code of Criminal Procedure, 1973 (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023), the Petitioners seek to quash and set aside the order dated 27th July 2018 passed in Case No. 147/SW/2015 by the learned Judicial Magistrate First Class, 49th Court, Vikhroli, Mumbai, and the order dated 9th July 2019 passed in Criminal Revision Application No. 1037 of 2018 by the learned Sessions Court, Bombay, rejecting the Petitioner's discharge application.

2. This Court, vide order dated 7th October 2019, was pleased to issue notice to the Respondents and grant interim relief in terms of prayer clause (d).

3. Heard Mr. Dave, learned Advocate for the Petitioners and Mr. Jadhav, learned Advocate for Respondent No.2. The matter is taken up for final disposal at the admission stage. With the consent of the parties, the matter is heard finally.

4. The case of Respondent No. 2 the original complainant, briefly stated, is as under:

4.1 Respondent No. 2 filed a complaint bearing C.C. No. 147/SW/2015 before the learned Judicial Magistrate First Class, 49th Court, Vikhroli, Mumbai, under Sections 418 and 420 read with Section 34 of the Indian Penal Code, 1860 (for short IPC). It is the contention of

Respondent No. 2 that, Respondent No. 2 and his brother were tenants in respect of Gala Nos. 1 and 2, each admeasuring 366 sq. ft. carpet area, situated on the ground floor, Omkar/Navkar Chawl, Navroji Lane, Ghatkopar (West), Mumbai – 400 086. That, Petitioner No. 2 submitted a redevelopment proposal on behalf of Petitioner No. 1 for the above-said Chawl property. That, Petitioner No. 2 dishonestly induced Respondent No. 2 and his brother to give the said two galas for redevelopment purposes. That, Respondent No. 2 and his brother were promised and assured that they would be provided with two Galas of 366 sq. ft. carpet area each on the ground floor. Based on the said assurances, Respondent No. 2 and his brother gave consent to the Petitioners for redevelopment.

4.2 That, after signing the consents, Petitioner No. 2 prepared an Agreement for Alternate Accommodation dated 10th August 2008 and Deed of Confirmation dated 11th June 2009.

4.3 That, Petitioner No. 2, on behalf of Petitioner No. 1, made a representation and promise to Respondent No. 2 and his brother that they would be provided with the aforesaid galas in accordance with Clauses 7(a) and 7(b) of the Agreement for Alternative Accommodation dated 10th August 2008. That, Respondent No. 2 and his brother were to be provided with a gala having 11 feet frontage on the front side, facing the main road, in the new saleable building. In the event of

refusal by the MCGM to sanction/approve the plans, Respondent No. 2 and his brother would be provided with 2 galas admeasuring 215 sq. ft. each, having 8 feet frontage on the front side, facing the main road. That, the Petitioners were also to provide one garage admeasuring 280 sq. ft., which would be located behind the 2 galas. The understanding was that the total area to be provided to Respondent No. 2 and his brother shall not be less than 710 sq. ft. carpet area.

4.4 That, Petitioners completed the construction and handed over possession of two galas admeasuring 215 sq. ft. each along with covered garage admeasuring 280 sq.ft. In or about November 2014, the staff members of the MCGM Building and Factory Department visited the premises and informed that the rear-side covered garage was not sanctioned as a garage, but was sanctioned as a stilt parking area.

4.5 That, Respondent No. 2 and his brother received a notice under the Maharashtra Regional and Town Planning Act, 1966 (for short MRTP Act) dated 29th November 2014. Thereafter, Respondent No. 2 filed the present criminal prosecution before the learned Judicial Magistrate First Class, 49th Court, Vikhroli, Mumbai. That, on 29th October 2015, the learned Judicial Magistrate First Class, 49th Court, issued an order of process. The said order of issuance of process was challenged by the Petitioners by filing a Criminal Revision Application bearing No. 1037 of 2018 before the Sessions Court, Mumbai. The

Revision Application was dismissed vide order dated 9th July 2019. It is these two orders that, are challenged by way of the present Writ Petition.

5. Mr. Kapil Dave, learned Advocate appearing on behalf of the Petitioners, submitted that:

5.1 A perusal of the complaint would clearly indicate that, no offence is made out against the Petitioners. Under Clause 7(a) of the Agreement for Permanent Alternate Accommodation dated 10th August 2008, the Petitioners were to provide a gala with 11 feet frontage on the front side, facing the main road, in the new saleable building. Under Clause 7(b), it was provided that, in case the MCGM refused to sanction or approve the plans, then in that event, the Petitioners would provide to Respondent No. 2 and his brother 2 galas admeasuring 215 sq. ft. each, having 8 feet frontage on the front side, facing the main road. The Petitioners were also to provide one garage admeasuring 280 sq. ft., which would be located behind the 2 galas. In all, the total area to be provided to Respondent No. 2 and his brother shall not be less than 710 sq. ft. carpet area.

5.2 Respondent No. 2 and his brother have received possession of the 2 shops with a garage behind the shops and have given an undertaking (written) wherein they have confirmed that they have seen, verified and

approved the plans and accepted possession of the said shops and garages. The said undertaking is dated 5th February 2013 and the letter is dated 6th February 2013.

5.3 Respondent No. 2 has used the garage for commercial purposes and changed the use of the premises, which was against the approval of the MCGM. That, MCGM issued a notice to Respondent No. 2 to restore the garage to its original use. It is only after the issuance of the notice by the MCGM, that Respondent No. 2 filed the present malicious criminal complaint, alleging offences of cheating under Sections 418 and 420 of the IPC. The criminal prosecution is mala fide and is filed to pressurize the Petitioners. It is an arm- twisting tactic.

5.4 The order of issuance of process under Section 418 of the IPC is totally untenable. Respondent No. 2 has accepted possession of the shops along with the garage/ stilt and executed a document which prima facie indicates Respondent No. 2's satisfaction with the approved plans.

5.5 In such facts and circumstances, a complaint under Section 418 of the IPC is totally unsustainable. That, the shops allotted to Respondent No. 2 have already been sold by Respondent No. 2 under registered sale deeds. That, Respondent No. 2 has not stated what false representation was made by the Petitioners, which Respondent No. 2 and his brother

relied upon. That, the shops were sold under registered documents, being Sale Deeds dated 16th October 2017 and 18th January 2018. In this background, an offence of cheating can never be made out against the Petitioners. The gift deed executed, clearly establishes that the Respondent and his brother were given 2 shops and garage in compliance with the agreement. That, it was given free of cost and on ownership basis.

5.6 Perusal of the order of issuance of process would indicate that no process has been issued under Section 420 of the IPC. That, being so, the Court ought not to have issued process under Section 418 of the IPC. That there is no basis to invoke the provisions of section 418 of IPC. The transaction is well documented.

5.7 The premises have been handed over to Respondent No. 2 and his brother free of cost and on an ownership basis, which is evident from the record. That Respondent No. 2 has sold the shops which he had received from the Petitioners. That the area handed over to Respondent No. 2 is confirmed in the sale deed of the second shop.

5.8 The Gift Deed also indicates that, no offence of cheating can be made out against the Petitioners. That, no offence under Section 418 has been made out against the Petitioners and that no wrongful loss has been caused to Respondent No. 2 and his brother. That, Respondent No.

2 ceased to be the owner of the shop by selling the same to third parties. That, the garage was also given under the same Agreement along with the shops. That, no wrongful loss has been caused to Respondent No. 2 and his brother.

6. Mr. Jadhav, learned Advocate appearing for Respondent No. 2, submitted that:

6.1 The offence of cheating has been clearly made out, as the Petitioners have not provided a total area of 710 sq. ft. carpet area. The Petitioners have never put up the agreed plan of 710 sq. ft. carpet area shop for approval before the MCGM. The Petitioners put up a plan bearing Sr. No. 635 on 11th June 2009 through their Architect for two stilt parking spaces on the rear side of Shop Nos. 1 and 2, which was approved on 10th August 2009. The Petitioners executed the Agreement for Alternate Accommodation along with the Deed of Confirmation on the same day, i.e. 11th June 2009. This clearly shows that the Petitioners were having an intention to cheat Respondent No. 2 and his brother. The Petitioners handed over two stilt parking areas as garages. That, subsequently, a notice was issued under the Maharashtra Regional and Town Planning Act, 1966, regarding the unauthorized use of the said areas as garages instead of stilt parking spaces.

6.2 The ingredients of the offence under Section 418 of the IPC are

clearly made out. That, the Petitioners, with dishonest intention, made misrepresentations to Respondent No. 2 and his brother, despite having knowledge that they had not put up the agreed plan for the shop and garage. The Petitioners were under a duty to protect the interests of Respondent No. 2. That, the stilt parking space is a common parking area available, and the developer is obliged to provide the same under the DCR. That, it is not an additional premises/area that he is authorized to sell. That, upon issuance of the Occupation Certificate and registration of the Society, the building, as well as the stilt parking spaces, open spaces, open terraces and all common amenities, become the property of the Society. That, a stilt parking space cannot be termed as an open or covered garage. That under the Maharashtra Ownership Flats Act, 1963, (for short MOFA) the developer's right is restricted to flats/shops and/or garages, which means that any premises which is included in the Floor Space Index (FSI) can be sold. A stilt parking space is not included in the FSI. What was allotted to Respondent No. 2 and his brother is stilt parking.

6.3 Prima facie, an offence under Section 418 of the IPC is made out. The defence of the Petitioners cannot be considered at this stage. The order of issuance of process under Section 418 has been rightly passed and confirmed by the Sessions Court in Revision.

6.4 The Petitioners knowingly represented the stilt parking spaces as

garages, despite the understanding, thereby causing wrongful loss to Respondent No. 2 and his brother. The present case is not a mere contractual dispute, but a calculated act of redevelopment fraud, whereby Respondent No. 2 was deceived into surrendering valuable rights in exchange for an illegal and inferior premises, thereby attracting criminal liability under Section 418 of the IPC.

6.5 Mere availability of a civil remedy does not bar criminal prosecution. The complaint discloses deception, inducement and wrongful loss. The compilation of documents containing the plans shows that the Petitioners never submitted any plan for a shop admeasuring 710 sq. ft. carpet area. It is not the case of the Petitioners that they have handed over a shop admeasuring 710 sq. ft. carpet area or a garage as per the terms and conditions of the Agreement for Alternate Accommodation.

6.6 Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *Nahalchand Laloochand Private Limited v. Panchali Co-operative Housing Society*, reported in *AIR 2010 Supreme Court 3607*, wherein it was held that the stilt portion or stilt area of a building is not a garage under the Act and that the builder cannot sell the same as a flat. In view thereof, it was prayed that the Petition be dismissed.

7. Perused the entire record. Perusal of the complaint would

indicate that, the main grievance of Respondent No.2 is that, the original Accused No. 2 dishonestly induced Respondent No.2 and his brother to give their two galas for redevelopment purposes on the promise and assurance that Respondent No.2 and his brother would be provided with galas admeasuring 366 sq. ft. each. It is the contention of Respondent No.2 that, based on the said assurances, the documents of consent and the Agreement for Alternate Accommodation were signed. A Deed of Confirmation dated 11th June 2009 was prepared and registered between Petitioner No. 1 and Respondent No. 2 and his brother.

8. A Deed of Confirmation dated 11th June 2009 is on record, which would indicate that Respondent No. 2 and his brother had confirmed that they were in possession and occupation of Gala Nos. 1 and 4, totally admeasuring 710 sq. ft. carpet area. That, as per the Agreement for Alternate Accommodation dated 10th August 2008, the Petitioners had agreed to allot to Respondent No. 2 and his brother permanent alternate accommodation on an ownership basis, free of cost, in the form of a gala admeasuring 710 sq. ft. carpet area, on the ground floor, in exchange for the old premises.

9. Under Clause 7(a) of the Agreement, it was provided that, the Petitioner shall provide the tenant with a gala having an 11-foot frontage on the front side, facing the main road, in the new saleable

building. Under Clause 7(b), it was provided that, in the event of the MCGM refusing to sanction/approve the plan, the Petitioner would provide the tenant with two galas, each admeasuring 215 sq. ft. and having an 8-foot frontage on the front side, facing the main road. The Petitioner would also provide one garage admeasuring 280 sq. ft. It was agreed that the said garage would be located behind the two galas. It was understood between the parties that the total area to be provided to the tenant would not be less than 710 sq. ft. of carpet area.

10. The record indicates that, Respondent No. 2 and his brother gave their consent vide a letter/document dated 12th December 2012. Perusal of the record indicates that, there is an undertaking dated 5th February 2013 signed by Respondent No.2 and his brother. The said undertaking refers to the agreement dated 10th August 2008 and the deed of confirmation dated 11th June 2009. In clause 2 of the undertaking Respondent No.2 and his brother have specifically stated that in pursuance to the obligation to the Petitioner under the said agreement the Petitioner had handed over possession of the new premises together with the fixtures, fittings, installations. Clause 3 of the agreement is particular important which read as under.

“3. We hereby put on record that, prior to taking of possession of the said new premises:

a. We have inspected the said new premises and tested

all installations, fixtures, fittings, etc., which we confirm are perfectly in good condition and further that we have no complaint/s of any nature whatsoever regarding workmanship and / or quality of materials used and the area of the said new premises which is physically measured by us and we hereby confirm are in accordance with the said agreement.

b. We have also inspected the general amenities and facilities in the buildings such as lifts, water pumps, tanks, firefighting equipment, etc., and we are fully satisfied as to their quality and working conditions.

c. We further confirm and record that at our request you have not constructed the wall between Shop No. 1 & 2.

d. We confirm that we have seen and verified the approved plan wherein our Shop No.1 & 2 and Garage/Stilt is approved and which is in accordance with the said agreement and in particular the front opening of the shops are more than 8 (Eight) feet in width”

11. On record is also a letter/document dated 6th February 2013 addressed by Respondent No. 2 and his brother to the Petitioner with reference to Shop Nos. 1 & 2 and the garage/stilt on the ground floor of the said building. This letter also, after referring to the Agreement dated 10th August 2008 and the Deed of Confirmation dated 11th June 2009, in paragraph 5 records as under:

“5. We have seen and verified the latest sanctioned plans of the building viz. constructed by you and new wing C/

building to be constructed by you duly sanctioned by the Municipal Corporation of Greater Mumbai. We have no objection to your having amendments to the said plans of the new wing C to be constructed by you, if permitted, by the Municipal Corporation of Greater Mumbai from time to time and constructing accordingly hereinafter”.

12. On record is also the letter dated 8th August 2013 address by the Respondent No.2 and his brother to the Petitioner which reads as under:

“We wish to remove Center Wall of our two stilt, and a gate from our shop No.1 to stilt. We wish to cover the grill by cement sheet. We wish to make flooring of Vitrified Tiles in our stilt. These changes will be done at our own risk and cost, you will not be held responsible for the consequences of the same”.

13. This Clearly indicates that the Respondent No.2 and his brother were prima facie aware of the plans, had verified the documents. The said undertakings are valid and subsisting. Infact the said documents indicate that the Respondent No.2 and his brother had accepted the premises in accordance to and in compliance of clause 7 (b) of the Agreement. The said document which are executed by the Respondent No 2 and his brother has not been considered by the courts while issuing the order of process and rejecting the discharge application.

14. In reply the Petitioner by letter dated 7th March 2014 and also objected to the enclosing of the stilt parking and opening of a door from the shop to the stilt without the permission of the local authorities. It

was specifically mentioned in the letter that, the stilt is allotted for parking vehicles only. Respondent No. 2 and his brother were called upon by the Petitioners to remove and restore the unauthorized work. A notice under Section 53(1) of the Maharashtra Regional and Town Planning Act was also issued to the Petitioner, which, after considering the Petitioner's reply dated 7th November 2014, was revoked, and a fresh notice under Section 53(1) of the Maharashtra Regional and Town Planning Act was then served on Respondent No. 2 and his brother. By a letter dated 27th December 2014 addressed by Respondent No. 2 and his brother in reply to the MRTP notice under Section 51(1) dated 29th November 2014, have specifically stated that they reinstated the stilt portion in its original form, as required by the notice under Section 52(1).

15. The notice dated 29th November 2014 was issued to Respondent No. 2 and his brother under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1960. A perusal of the said notice would indicate that, it pertained to certain development and/or change in the user of the premises carried out by Respondent No. 2 and his brother without permission and in contravention of the approved plans. By the said notice Respondent No. 2 and his brother were called upon to reinstate the stilt portion of the A and B Wing buildings to its original state and in accordance with the approved plan dated 29th December

2012. Respondent No. 2 and his brother were given a period of 30 days to comply with the said notice. It appears that it is only after receipt of the notice dated 29th November 2014 that the complaint has been filed.

16. Perusal of the order dated 29th October 2015 would indicate that process has been issued against the Petitioner for an offence punishable under Section 418 of the IPC. The process appears to have been issued on the basis that, after the notice was received from the BMC, it was realized that the constructed area which was to be handed over to the complainant was a stilt parking. It is alleged that the complainant and his brother have been cheated, including in respect of the Development Agreement, by hiding material facts. I have noted that the complaint noted does not refer to certain critically important and relevant documents i.e. undertaking dated 5th February, 2013, letter dated 6th February 2013 and letter dated 8th august 2013.

17. The said order dated 29th October 2015 was challenged by the Petitioner by filing Criminal Revision Application No. 213 of 2016. By an order dated 28th April 2017, the Criminal Revision Application was partly allowed. The order dated 29th October 2015 was set aside, and the matter was remanded back to the Metropolitan Magistrate.

18. The Ld. Metropolitan Magistrate, 49th Court, Vikhroli, Mumbai, on remand, reconsidered the matter and, by order dated 27th July 2018,

issued process against the Petitioner for an offence punishable under Section 418 read with Section 34 of the IPC.

19. The order dated 27th July 2018 was challenged by the Petitioner by filing Criminal Revision Application No. 1037 of 2018. By order dated 9th July 2019, the said Criminal Revision Application was dismissed. The learned Sessions Judge mainly relied upon Clauses 7(a) and 7(b) to observe that necessary provisions should have been made in the plan while getting the same sanctioned by the BMC and that sanction from the BMC was required to comply with Clause 7(a) and 7(b) of the agreement.

20. Perusal of the gift deed dated 7th December 2017 executed between Haresh Mansukhlal Mehta the brother of the Respondent No. 2, the fact that Respondent No. 2 and his brother became entitled to Shop No. 1 and Shop No. 2, each admeasuring 215 sq. ft. carpet area, with 8 feet frontage on the front side facing the main road, along with two garage premises, each admeasuring 140 sq. ft. carpet area, thus totaling 710 sq. ft., on an ownership basis, free of cost, has been specifically stated and admitted.

21. In the sale deed dated 16th October 2017 executed between Respondent No. 2 and Haresh Mansukhlal Mehta, as parties of the first part, and Daksha Hasmukh Patel and Preeti Jagdish Patel, as transferees

and parties of the second part, it is specifically recorded that the Petitioner, upon completion of the building, obtained the full Occupation Certificate on 7th November 2016 and handed over possession of Shop No. 1 on the ground floor, admeasuring 215 sq. ft. in A Wing, and Shop No. 2 on the ground floor, admeasuring 215 sq. ft. in A Wing, to the transferors, i.e., Pradip Mansukhlal Mehta and Haresh Mansukhlal Mehta. There was also a Sale Deed dated 18th January 2018 executed between Pradip Mansukhlal Mehta, as the transferor, and Rasila Lalit Patel, Mrs. Preeti Jagdish Patel and Mrs. Daksha Hasmukh Patel, as the transferees, wherein the Agreement of Alternate Accommodation dated 10th August 2010 and the Confirmation Deed dated 11th June 2011 were once again referred to and reconfirmed. It is stated therein that, the transferor became entitled to Shop Nos. 1 and 2, each on the ground floor, admeasuring 215 sq. ft. carpet area, with 8 feet frontage on the front side facing the main road, along with other premises admeasuring 280 sq. ft. carpet area, thus totalling 710 sq. ft. carpet area in A Wing of the building known as Navkar Kripa Cooperative Housing Society Limited, from the Petitioner. The Respondent No 2 accepts compliance of clause 7 (b) of the Agreement.

22. Perusal of the material and documents on record i.e. (i) clause 3 of the undertaking dated 5th February 2013; (ii) paragraph 5 of undertaking dated 6th February 2013; (iii) letter of the Respondent No.2

and his brother dated 8th August 2013, (iv) Petitioner's reply dated 7th March 2014; (v) sale deeds dated 16th October 2017 and 18th January 2018 and (vi) the MRTD notice and the Respondent No.2 reply dated 29th November 2014 it is clear that the parties were aware of the exact nature of the transaction, the plans sanctioned/revised, and had accepted the premises being fully aware of the exact nature of the premises. The conduct of the Respondent No.2 and brother and the documents executed by them clearly indicate that the Respondent No.2 and his brother were at all time aware of the correct facts and had by their conduct given a clear go by to the clause 7(a) of the agreement and accepted and confirmed compliance of clause 7(b) of the agreement.

23. The learned Advocate appearing for Respondent No. 2 has relied upon the judgment of the Hon'ble Supreme Court in *Nahalchand Laloochand Private Limited v. Panchali Co-operative Housing Society*, reported in AIR 2010 Supreme Court 3607, to submit that a stilt portion or stilt area of a building is not a "garage" under the Act, though it may be usable as a parking space. It was submitted that for the purposes of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 common areas and facilities, including open parking spaces and stilt parking spaces, are not "flats" and cannot be sold separately by the promoter. There can

be no issue with the proposition of law as enunciated by the judgment. It is pertinent to note here that, in the present matter none of the premises have been sold. The premises have been handed over in a redevelopment project as alternate accommodation and allotted free of cost on ownership basis. The parties have executed various documents which are subsisting and valid.

24. Pertinent to note that, the complaint was filed under Sections 420 and 418, read with Section 34, of the IPC. This was after the issuance of notice under the MRTP Act. The order of issuance of process is only under Section 418 of the IPC. This would imply that the prayer in respect of Section 420 has been rejected. Section 420 provides for cheating and dishonestly inducing delivery of property. The process has been issued under Section 418 of the IPC, which provides for cheating with knowledge that wrongful loss may ensue to a person whose interest the offender is bound to protect. It provides that, whoever cheats with the knowledge that he is thereby likely to cause wrongful loss to a person whose interest in the transaction to which the cheating relates he was bound, either by law or a legal contract, to protect, shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

25. In the present case, there are documents in the form of the Permanent Alternate Accommodation Agreement dated 10th August

2008 and the Confirmation Deed dated 11th June 2009, which would indicate that the parties had agreed to the transaction and certain terms and conditions. Perusal of the record would indicate that the transaction between the parties starts with the Agreement for Alternate Accommodation dated 10th August 2008. The said agreement records that, Respondent No.2 and his brother, who were in possession and occupation of premises being Gala Nos. 1 to 2, totally admeasuring 710 sq. ft., on the ground floor of the structure which was proposed to be redeveloped, and that the Petitioner agreed to give to Respondent No.2 and his brother alternative permanent accommodation in the new building. It was agreed between the parties, that the Respondent No.2 and his brother would get, on ownership basis, one gala admeasuring 710 sq. ft. area in the proposed new building to be constructed by the owner on the said property. As per clause 7(a) and 7(b) the said agreement, the Petitioners were to either provide one gala of 710 sq. ft. with 11-foot frontage, or, if the plans could not be approved or sanctioned, the owner was to provide 2 galas admeasuring 215 sq. ft. each, facing the main road, and one garage admeasuring 280 sq. ft. behind the said 2 galas, thereby making the total area of 710 sq. ft. Clearly the parties at the first instance agreed and provided for alternative options to ensure compliance of the agreement.

26. The parties then executed a Deed of Confirmation dated 11th June

2009, wherein the parties confirmed and declared the Agreement for Alternate Accommodation dated 10th August 2008.

27. The part occupation certificate for the building was issued by the MCGM on 29th December 2012. On 5th February 2013, Respondent No. 2 and his brother executed an undertaking for allotment of Shop No. 1 and 2 and garage/stilt, collectively referred to as “the said new premises.” The undertaking refers to the agreement dated 10th August 2008 and deed of confirmation dated 11th June 2009. In the undertaking, the Respondent No. 2 and his brother have specifically stated that they have received quiet, full and complete vacant possession of the said new premises, together with the fixtures, fittings, installations and all other amenities. In Clause 3, Respondent No. 2 and his brother have confirmed that they have seen and verified the approved plans wherein Shop No. 1 and 2 and the garage/stilt are approved and which are in accordance with the said agreement, and in particular, that the front openings of the shops are more than 8 feet in width. The said undertaking is duly notarized before a Notary Public. By the said undertaking the parties accepted compliance in terms of clause (b) of the agreement and at all times were aware that stilt parking was handed over. The same was infact accepted and referred to as garage/stilt. The respondent No.2 and his brother by this time were aware of all the required and sanctioned plans.

28. The Respondent No. 2 and his brother also executed a letter dated 6th February 2013, wherein, after again referring to the agreement dated 10th August 2008 and deed of confirmation dated 11th June 2009, they have, in Clause 5, specifically stated that they have seen and verified the latest sanctioned plan of the building, that is, the building already constructed and the new Wing C which was to be constructed. Respondent No.2, has given no objection to the Petitioner for making amendments to the said plan of the new Wing C which was to be constructed, in accordance with the plans, if permitted by the Corporation from time to time.

29. Perusal of both the letter and the undertaking would indicate that the Petitioner, when they took possession of Shop No. 1 and Shop No. 2 and the garage/stilt, which they collectively referred to as the said “new premises”, were aware of the agreement dated 10th August 2008 and deed of confirmation dated 11th June 2009. They have specifically stated that they have seen and verified the approved plans wherein their Shop No. 1 and Shop No. 2 and garage and stilt are approved and have, more particularly, stated that the same are in accordance with the said agreement. They have also stated that the front opening is more than 8 feet in width, which is in consonance with clause 7 (b) of the Agreement. Considering the two documents, it is clear that the Respondent No. 2 and the Petitioner had, with knowledge and

awareness, taken possession of the premises. The parties were ad-idem in respect of the nature of the transaction and the agreement. By referring to the agreement dated 10th August 2008 and deed of confirmation dated 11th June 2009, at least prima facie, it is clear that the Petitioner, while giving the undertaking and letter dated 5th February 2013 and 6th February 2013, were clearly aware of their rights and the documents which they were executing. In this view of the facts, the contention contained in the complaint that they have been cheated would not be tenable.

30. Prima facie there was no interest left which was to be protected. The interest and rights of Respondent No.2 and his brother were adequately protected. I say this for one more reason, that is, by letter dated 8th August 2010, the Respondent No. 2 and his brother had informed the Petitioner that they intended to remove the center wall between the 2 Shops and cover the grill of the stilt with cement sheet and vitrified tiles flooring in the stilt. In the said letter, the Respondent No. 2 and his brother have again referred to the 2 shops and stilt area and sought permission to make changes in the said premises. This is also indicative of the fact that as of 8th August 2018, the Respondent No. 2 and his brother had no complaint or grievance against the Petitioner. This letter has not been disputed during the course of argument. The letters of the Respondent No.2 and brother itself indicate that the

alleged charges are groundless and that there is no material is proceed against the Petitioners.

31. The Respondent No 2 and his brother were aware that what was given and accepted in fact a stilt parking. In view thereof no case of cheating can be made out. The Petitioner, by letter dated 7th March 2014, had informed the Respondent No. 1 and his brother of the unauthorized work carried out in the shops. Objection was also taken in respect of the enclosing of the stilt area and opening the door from the shop to the stilt without the permission of the local authority. It was specifically mentioned by the Petitioner that the stilt had been allotted for parking of vehicles. This letter appears to have been sent by speed post. Thus, it is clear that the Respondent No.2 and brother had agreed and accepted the new premises. The term garages and stilt both have been used. The contents of the undertaking are prima facie indicative of the fact that the Respondent No.2 and his brother were at all times aware of the all the facts and plans had been verified. The conduct of the Respondent No.2 and his brother shows compliance of the agreement in its entirety by giving a go by to clause 7(a) and accepting the premises in terms of clause 7(b) of the agreement.

32. The Petitioner also received a notice under Section 53(1) of the MRTP Act. The notice dated 20th October 2014 under Section 53(1) of the MRTP Act was in respect of the construction of partition walls to

enclose the stilt portion of A Wing and B Wing. The Respondent No. 2 and his brother also received a notice under Section 53(1) of the MRTTP Act on 20th November 2024 in respect of the said same violation. It is also on record that the Petitioner No. 1, after clarifying with the Municipal Authority in respect of the construction of the partition walls to enclose the stilt portion, the Municipal Corporation revoked the notice against the Petitioners. The Section 53(1) notice under the MRTTP Act was continued/fresh notice issued to the Respondent No. 2 and his brother.

33. It is after the receipt of the notice under the MRTTP Act that the Respondent No. 2 filed a criminal complaint under Sections 418, 420 read with 34 of the IPC. As of the date of the filing of the complaint, the Respondent No. 2 and his brother had executed an undertaking dated 5th February 2013 and letter dated 6th February 2013, wherein they had accepted possession of the said new premises, which included Shop No. 1 and Shop No. 2 and garage/stilt. They had specifically admitted that they had verified the plans and that further, they had no objection to the new construction or amendment of the plan. By letter dated 8th August 2013, they had also carried out certain changes without permission of the Corporation, that is, removing of the common wall of Shop No. 1 and Shop No. 2 and opening a door from Shop No. 1 and 2 to the stilt portion/garage. This conduct of the Respondent No. 2, with

other facts, prima facie indicates that they were aware of the nature of the transaction they executed and their intention of using the stilt/garage as part of their commercial shop was prima facie evident. It is only after receiving the notice under the MRTP Act that the present complaint has been filed.

34. The said Gift Deed is of the year 2017, that is, after the filing of the criminal complaint, which confirms that Shop No. 1 and 2, each admeasuring 215 sq. ft., with 8 feet frontage on the front side facing the main road, along with 2 garage premises admeasuring 140 sq. ft. carpet, totaling 710 sq. ft. carpet, were allotted to Respondent No. 2 and his brother. There is a sale executed on 16th October 2017 between Pradip Mansukhlal Mehta and Haresh Mansukhlal Mehta, in their capacity as transferors, and Mrs. Preeti Jagdish Patel, Mrs. Daksha Hasmukh Patel and Rasila Lalit Patel, as transferees. This sale deed is in respect of Shop No. 2. The sale deed also records the transaction between the Petitioner and Respondent No. 2 and his brother. A sale deed was executed on 10th January 2018 between Pradip Mansukhlal Mehta as the transferor and Mrs. Preeti Jagdish Patel, Mrs. Daksha Hasmukh Patel and Rasila Lalit Patel as the transferees, in respect of Shop No. 1.

35. Perusal of the said document would indicate that the Respondent No. 2 and his brother have accepted the said shops along with the

garage/stilt and acted upon them and executed further documents of transfer of title in respect of the said shops. The record would prima facie indicate that Respondent No. 2 and his brother have both accepted the said “new premises” as described in the undertaking dated 5th February 2013. After accepting the said new premises, the parties have sought to make alterations and renovations in respect of the garage/stilt premises so as to attach it to the commercial premises. Prima facie, it appears that what the parties proposed was to use the said garage or stilt as part of the commercial premises. This is not permissible. The conduct of the Respondent No.2 and his brother negates and neutralizes the alleged offence under section 418 of the IPC. The Respondent No.2 by their conduct have acknowledged and accepted the change if any. Suspicion if any in respect of allotting a stilt in place a garage has been explained and neutralized by the conduct of Respondent No.2 himself. The peculiar facts of the case do not even raise any suspicion much less any strong or grave suspicion. It prima facie appears that at a highest, a civil dispute of a breach of terms and conditions may be made out which is being attempted to be converted into a criminal prosecution on the case of a mere suspicion. Considering the aforesaid facts, no prima facie, case can be made out under Section 418 of the IPC.

36. Considering the documents on record and the conduct of the Respondent No.2 and his brother it cannot be said that the Petitioner

was bound to protect any interest of the Respondent No. 2 and his brother under law or by a contract. As stated above, the Respondent No. 2 and his brother, by their conduct and the documents they executed, have, in fact, as it appears, agreed to alter the terms of the agreement dated 10th August 2008. In the peculiar facts of this case, it cannot be said that any offence of cheating under section 418 of IPC against the Petitioner is made out.

37. In the present case, the Petitioner has accepted the stilt, the 2 stilt parking spaces, as against garage, which is evident from their undertaking dated 5th February 2013 and letter dated 6th February 2013. In case the Petitioner has any grievance, the Petitioner can approach appropriate civil proceedings for breach of contract or non-fulfilment of the duties/liabilities which arise from the agreement, if that is permissible in law. As far as the present proceedings are concerned, considering the overall facts and circumstances, the conduct of the parties and the documents which have been executed, prima facie, it appears that no case as alleged under Section 418 has been made out.

38. I have also noted that Respondent No 2 has not made any reference to the following important and relevant documents executed by Respondent No.2 and his brother. The said documents are as under:-

- (i) Undertaking dated 5th February 2013,
- (ii) The letter dated 6th February 2013 and
- (iii) The letter dated 8th August 2013.

Pertinent to note that, Respondent No.2 and his brother have given a duly executed undertaking dated 5th February 2013, wherein they have specifically mentioned and confirmed that, they had seen and verified the approved plan wherein their Shop No. 1 and 2 and garage/stilt is approved and that the same is in accordance with said agreement and in particular the front opening of the shops are more than 8 feet in width. This statement shows a clear and unequivocal compliance of clause 7(b) of the Agreement of Alternate accommodation. Further, in the letter dated 6th February 2013 the Respondent No.2 and his brother, have specifically stated that they have seen and verified the latest sanctioned plans of the building and new wing C/building to be constructed by the Petitioners duly sanctioned by the Municipal Corporation of Greater Mumbai and they gave their no objection to the Petitioner having/making amendments to the said plans of the new wing C, if the amendments are permitted by the Corporation. The Respondent No.2 and his brother have also confirmed of having taken possession of the said Shop No 1 and 2 and Garage/Stilt which is termed as the “said new premises” Further, by letter dated 13th August 2013, addressed to the Petitioners, Respondent

No. 2 and his brother informed the Petitioners that they wished to remove the center wall of the two stilts and remove (make) a gate from Shop No. 1 to the stilt. The Petitioners were further informed that the Respondent No.2 proposes to cover the grill by cement sheet and also make vitrified tile flooring in the stilt. By the said letter the Petitioners were assured that the changes would be done at the Respondent No.2's risk and cost. The said letter is also not disclosed in the complaint. In my view the Respondent No.2 has not stated the full, true and correct facts in his complaint before the Magistrates Court.

39. Pertinent to note that the order issuing process refers to the complaint, verification and documents on record. When a process is issued and cognizance is taken, it is the duty of the magistrate to ascertain to truth. The same is done from a perusal of the complaint, examining the complainant on oath/verification and on perusal of the documents. It is this the duty of the complainant to place on record all the relevant turs and correct facts. Issuing of process requires a judicial application of mind to the facts. The facts therefore have to be true and complete.

40. In this context, it would be useful to refer to the Judgement of the Hon'ble Supreme Court in the case of *Rekha Sharad Ushir v. Saptashrunji Mahila Nagari Sahakari Patsansta Ltd* 2025 SCC OnLine

SC 641, wherein the Hon'ble Supreme Court has in paragraphs 10 and 11 observed that,

10. *“Recording the complainant's statement on oath under Section 200 of the CrPC is not an empty formality. The object of recording the complainant's statement and witnesses, if any, is to ascertain the truth. The learned Magistrate is duty-bound to put questions to the complainant to elicit the truth. The examination is necessary to enable the Court to satisfy itself whether there are sufficient grounds to proceed against the accused. After considering the complaint, the documents produced along with the complaint, and the statements of the complainant and witnesses, if any, the learned Magistrate has to apply his mind to ascertain whether there is sufficient ground for proceeding against the accused. If he is satisfied that there is sufficient ground to proceed against the accused, then the learned Magistrate has to issue a process in terms of sub-Section (1) of Section 204 of the CrPC. The corresponding provision under the BNSS is Section 227. Setting criminal law in motion is a serious matter. The accused faces serious consequences in the sense that he has to defend himself in the trial.”*

11. *“It is settled law that a litigant who, while filing proceedings in the court, suppresses material facts or makes a false statement, cannot seek justice from the court. The facts suppressed must be material and relevant to the controversy, which may have a bearing on the decision making. Cases of those litigants who have no regard for the truth and those who indulge in suppressing material facts need to be thrown out of the court. In paragraph 5 of the decision of this Court in the case of S.P. Chengalvaraya Naidu v. Jagannath¹, it is held thus:”*

“5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that “there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence”. The principle of “finality of litigation” cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, taxevaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

41. In my opinion, it prima facie appears that the Respondent No.2 has suppressed material facts in the complaint. The entire facts were not before the Court. Documents executed by the Respondent No.2 and his brother have, purposely not been referred to in the Complaint, in an attempt to make out a criminal offence. It is not that the documents are that of the Petitioners or some third party. The facts and documents as suppressed are material and relevant to the controversy in issue, and have a direct bearing on the matter and the decision making process.

Based on incomplete and convenient facts, the Respondent No.2 has sought to invoke and initiate criminal prosecutions in respect of matters which are otherwise at the highest are purely civil and contractual disputes and issues. In my considered opinion in the present case Respondent No 2 has suppressed the material facts of the case and process was issued on such incomplete facts.

42. Considering the facts of the present case, none of the ingredients required to make out an offence of cheating under Section 418 are available in the present case. Considering the conduct and the documents executed, an essential ingredient to make out an offence under Section 418 of the IPC is to cheat a person with the knowledge that he is likely thereby to cause wrongful loss to the person whose interest in the transaction to which the cheating relates he is bound to protect. In the present case, it prima facie appears that there are no such circumstances.

43. Considering the aforementioned facts, submissions and the law as laid down by the Hon'ble Supreme Court, I am inclined to quash the present proceedings. This would be a fit case to invoke the inherent powers of this court under the provisions of section 482 of the Code of Criminal Procedure to quash and set aside the criminal proceedings in the interest of justice and to prevent the abuse of the process of law. Considering the entirety of the facts, in my opinion petitioner have

clearly made out a case under the categories 1, 3 and 7 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.

44. In view of the aforesaid facts and circumstances the following order is passed :-

- (i) The present Criminal Writ petition is allowed in terms of prayer clause (c).

(RANJITSINHA RAJA BHONSALE, J.)