

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

WRIT PETITION NO. 3383 OF 2024

Dr. Rajendra Kanaiyalal Sanghavi

Age:67 years, Occ.: Doctor

1&2, 'Sunita' Nivas

Opposite Sacred Heart Church

78, Swami Vivekanand Road

Santacruz (West), Mumbai – 400054.

...Petitioner/Org. Accused

Versus

1. Dr. Sonal Sanghavi alias
Sonal Uday Thakkar
504, Laya Building
Veenasaz Videocon Layout
Thakur Complex
Kandivali (East)
Mumbai – 400 101.

2. State of Maharashtra

...Respondents

Mr. Ashok Mishra with Ms. Kinjal Mehta, Ms. Dhara Chauhan and
Ms. Diksha Nayak i/b M/s. Solicis Lex for the Petitioner.

Dr. Samarth Shrikant Karmarkar with Mr. Tarun Shailesh
Shrivastava i/b Karmarkar & Associates for the Respondent No.1.

Mr. Tanveer Khan, A.P.P. for Respondent No.2-State.

CORAM : ASHISH S. CHAVAN, J.
RESERVED ON : 16th SEPTEMBER 2026
PRONOUNCED ON : 18th SEPTEMBER 2026

JUDGMENT (Per Ashish S. Chavan, J.):

1. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned counsel appearing for the respondents waive notice on behalf of the respective respondents.

2. By way of this writ petition, the Petitioner, a senior citizen has approached this Court invoking its writ jurisdiction to quash and set aside the summoning order dated 12th September 2023 passed by the learned Additional Metropolitan Magistrate (JMFC) 71st Court, Bandra, Mumbai, in C.C. No. 252/Misc/2021, issuing process under Sections 420, 468 and 465 read with 34 of the Indian Penal Code ('IPC') against the Petitioner. The complaint has been filed by the sister of the Petitioner (Respondent No.1).

3. Heard learned counsel Mr. Ashok Mishra for the Petitioner and learned counsel Dr. Samarth Karmarkar for the Respondent No.1 and perused the record.

4. Learned counsel for the Petitioner has invited my attention to the complaint filed by the Respondent No.1 (original

complainant) who is the sister of the Petitioner, on the basis of which the summoning order was passed. The complaint makes several allegations against the Petitioner (original accused). Initially the Respondent No.1 had prayed for directions for investigation under Section 156(3) of the Code of Criminal Procedure, that prayer was rejected vide order 29th December 2022. Thereafter verification was recorded and process was issued.

5. A perusal of the complaint reveals that although several allegations are made against the Petitioner, the gist of the complaint is in respect of grievance regarding two flats. According to the Respondent No.1 with respect to Flat No.1, which was purchased by one H. B. Sanghavi, uncle of the Petitioner on 12th September 1970 and was gifted by him to the Petitioner on 9th November 1986 by way of a gift deed. The other allegation is about Flat No.2 the said flat was gifted by the mother of the Respondent No.1 (and the Petitioner) to the Petitioner and his wife, by way of an another gift deed. It is the case of the Respondent No.1 that this gift deed was illegal since the Petitioner was not given his share by the mother. Insofar as Flat No.1, it is the contention of the Respondent No.1 that there are no documents to show that the said flat was gifted to

the Petitioner. The Respondent No.1 has also alleged that the Petitioner was not treating his parents well and had forced his mother to sign the gift deed in favour of himself and his wife under duress. Thus, the Respondent No.1 alleges the offences of forgery and cheating against the Petitioner in respect of Flat Nos.1 and 2 by preparation of forged and fabricated documents viz. GIFT DEEDS.

6. With the assistance of the learned counsels for the respective parties, I have also perused the impugned order dated 12th September 2023 issuing process against the Petitioner for offences punishable under Sections 420, 468, 465 read with 34 of the IPC. The order reads as under:-

“Read complaint and verification of complainant. Perused the documents. Heard Advocate for the complainant.

According to complainant accused illegally got transferred the flat in their name for avoiding the share of complainant.

The complainant has made out prima facie case u/s 420, 468, 465 R/W 34 of IPC. Hence issue process u/s 420, 468, 465 R/W 34 of IPC against accused persons.

No Case made out u/s 108, 120A, 307, 304A, 504, 506 against accused hence accused are discharged from those offence.”

7. On behalf of the learned counsel for the Petitioner it is submitted that the Gift Deed was executed and registered by the mother of the Petitioner on 31st December 2001. She passed away in July 2009. The complaint came to be filed in the year 2021, i.e. 20 years after the Gift Deed and nearly 12 years after the expiry of the mother of the Petitioner. The Gift Deed was admittedly not challenged by the Respondent No.1 in any Civil Court. Insofar as Flat No.1 is concerned, the same was validly gifted to the Petitioner by his uncle H. B. Sanghavi on 9th November 1986. Since then even this gift deed has not been challenged by the Respondent No.1 before any Civil Court. For the first time in 2021 the Respondent No.1 has filed a criminal complaint with malafide intentions to oust the rights of the Petitioner in the aforesaid flats by making reckless and frivolous allegations which are not supported by any documents.

8. The learned counsel for the Petitioner has also invited my attention to the orders passed by the Registrar, Co-operative Societies, 'H' West, Mumbai and the Divisional Joint Registrar, Co-operative Societies, Mumbai Division to contend that the Respondent No.1 had challenged the membership of the Petitioner

before the aforesaid authorities wherein she has failed to obtain any orders against the Petitioner.

9. On the other hand the learned counsel for the Respondent No.1 (original complainant) has defended the impugned order on the ground that the mother was forced to execute the Gift Deed by which the flat which was gifted to the Petitioner and his wife. Insofar as the other flat is concerned, there are no documents to demonstrate how the flat was transferred from H. B. Sanghavi to the Petitioner. It is alleged that the Petitioner has forged and fabricated the aforesaid GIFT DEEDS to unlawfully obtain the possession and title of the aforesaid flats.

10. On appreciation of the rival submissions, following facts emerge:-

It is not in dispute that the GIFT DEEDS are executed in 2001 by the mother of the Petitioner and in 1986 by the uncle of the Petitioner respectively. Both GIFT DEEDS are in favour of the Petitioner. These GIFT DEEDS are not challenged in any competent Civil Court by the Respondent No.1. The mother of the Petitioner has expired in July 2009. After almost 12 years of her death and 20

years after the execution of the gift deed the sister of the Petitioner (Respondent No.1) has chosen to institute the present complaint which has resulted in the summoning order which has been impugned by the present petition. The challenge mounted by the Respondent No.1 to the membership of the Petitioner in the Society in which the aforesaid flats are situated has also not resulted in any favorable orders to the Petitioner. The complaint clearly demonstrates that save and except bald allegations of forgery and fabrication of the GIFT DEEDS, there are no documents relied upon by the Respondent No.1 in support of her allegations. A bare reading of the complaint does not reveal even a *prima facie* case of forgery and/or cheating. A perusal of the summoning order indicates that the same is cryptic and unreasoned. The learned Magistrate has not assigned any reasons as to why, according to him, process ought to be issued against the Petitioner for offences of forgery and cheating. Although, the impugned order mentions that a *prima facie* case is made out, there is absolutely no reasoning to indicate how the learned Magistrate reached this conclusion.

11. In the wake of the aforesaid facts and circumstances and in the light of the fact that the impugned order suffers from lack of

reasoning as to why the Petitioner has been summoned to face charges of cheating and forgery, the same cannot be sustained and must be quashed and set aside.

12. In the circumstances, the impugned order dated 12th September 2023 passed by the learned Additional Metropolitan Magistrate (JMFC) 71st Court, Bandra, Mumbai, in C.C. No. 252/Misc/2021, is quashed and set aside.

With the above directions, the writ petition is disposed of. Rule is made absolute on the aforesaid terms.

ASHISH S. CHAVAN, J.