

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 5314 OF 2018**

1. Maahesh Mohandas Lalchanddani,
Age : 43 years,
Residing at: Kanha Residency,
3rd Floor, Near Triloknath Temple,
Tekdi Division, Section 17, Ulhasnagar-3,
Dist. - Thane
... Petitioner

V/s.

1. Deviprasad R. Dubey,
Age : 62 years,
Residing at: 603, Alishan Park,
Chikanghar, Birla College Road,
Kalyan (West), Dist. - Thane.

2. The State of Maharashtra
(through the Public Prosecutor,
High Court (AS), Mumbai.
... Respondents

Mr. Siddharth Jha a/w Mr. Chetan Gogawale i/by Law Global Advocates for the Petitioners.
Mr. A. K. Upadhyay a/w Mr. Rohan Kharat, Mr. Ajaydhar Dwivedi for Respondent No.1.
Mr. Prashant Jadhav, A.P.P. for Respondent -State.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 14th JULY 2026.

PRONOUNCED ON : 12th OCTOBER 2026.

JUDGMENT :-

1) By the present Petition, under Article 227 of the Constitution of India and Section 482 of Code of Criminal Procedure, 1973 (for short 'CrPC')/ now 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the Petitioner

seeks to quash and set aside the Order of issuance of process dated 6th March 2014, passed by the Judicial Magistrate First Class at Kalyan, OMA No. 174 of 2014, whereby the process was issued against the Petitioner under Section 418, 428, 465, 466, 468 read with 34 of the Indian Penal Code, 1860 (For short 'IPC') and Order dated 12th March 2015 passed by the Ad-hoc District Judge-1 and Additional Sessions Judge, Kalyan in Revision Application No. 100 of 2014.

2) Heard Mr. Siddharth Jha learned advocate for the Petitioner, Mr. A. K. Upadhyay learned advocate for Respondent No.1, Mr. Prashant Jadhav, learned A.PP for Respondent State.

3) The facts as alleged in the complaint are as under :

3.1) The Respondent No.1/ original complainant along with one Mr. Aniruddhkumar S. Pathak were partners in a partnership firm by the name of M/s. Ashutosh Developer (For short 'the said firm'), and undertook the business of development and construction of residential and commercial complexes.

3.2) The said firm acquired from Shri. Arjun Anaji Patil and 25 other residents of Titwala, certain lands in village Manda, Titwala, Kalyan District Thane, totally admeasuring 63,970 sq. mtr., for development purposes. This was under development agreement and consent deed dated 20th May 2008, which was registered before the Sub-Registrar, Kalyan-2 on 22nd January 2009 bearing Registration No. 420 of 2009.

3.3) The Respondent No. 1 was admittedly in need of financial assistance for development of the land. The Petitioner/Accused No.1 offered to provide financial assistance to Respondent No. 1. Based on the said assurance, Respondent No.1 agreed to induct the Petitioner as a partner of the said firm.

3.4) The Petitioner allegedly prepared a draft of Partnership Agreement dated 3rd September 2012, in English language. That, misrepresentations were made to Respondent No. 1 that, the said draft pertains to the induction of the petitioner in the said firm. Respondent No.1 and the other partner Mr. Aniruddhkumar S. Pathak relying on the words of the Petitioner signed the said document without reading the contents of the document. That, the Petitioner did not read over the contents of the documents to Respondent No.1. Subsequently, the Petitioner sent the said draft to Registrar of Firms at Bandra, Mumbai for effecting the change.

3.5) After a few days, the Petitioner informed Respondent No.1 and Mr. Aniruddhkumar S. Pathak that, they were shown to be retired as partners from the firm and that the entire firm had been acquired by the Petitioner. That, Respondent No.1 on realising that the Petitioner had cheated him, by letter dated 26th September 2012 addressed to the Registrar of Firms informed the office of the alleged fraud played by Petitioner No.1 and requested not to effect any change in the constitution of partnership.

3.6) The Respondent No.1 filed an application under the provisions of

the RTI Act and obtained the entire documents. On perusal of the documents so received, Respondent No.1 realised that he along with Mr. Pathak were shown as retired from the said firm and the entire firm was shown to have been acquired by the Petitioner and his family. Alongwith the partnership deed, the Petitioner submitted Form 'E' to the office of the Registrar of Firms, in which the signatures of the Respondent No. 1 and that of Mr. Pathak were forged. That, Form 'E' was notarised before the Accused No. 2.

3.7) On 13th August 2013, Respondent No.1 lodged the complaint with the Kalyan Taluka Police Station against the Accused for the offences of forgery and cheating. The transcripts were allegedly attached to the complaint. Copy of the Form 'E' was sent to a private Handwriting Expert at IFS-Forensic Science Department, Dhanakwadi, Pune. A report of the Handwriting Expert was filed along with the complaint. That, in spite of the complaint and evidence produced by Respondent No. 1, the Kalyan Taluka Police Station did not take any steps. The Respondent No. 1 addressed a letter dated 30th December 2013 to the Superintendent of Police. Hence, Respondent No.1 filed a complaint under Section 156(3) of the CrPC.

4) The learned Judicial Magistrate First Class, by Order dated 20th February 2014, after considering the facts, concluded that, there is no ground to send the matter for investigation under Section 156(3) of the CrPC. Verification was recorded on 20th February 2014. By an Order dated 6th March 2014, learned JMFC issued process against the Accused No.1 under Section

418, 420, 465, 466 and 468 of the IPC. No process was issued against the original Accused No. 2.

4.1) The Order dated 6th March 2014, was challenged by Respondent No.1 by filing a Criminal Revision Application No. 79 of 2014 which was dismissed by the District Judge-3 and Additional Sessions Judge, Kalyan by Order dated 20th June 2017. The Order dated 6th March 2014 as against the Accused No. 2/Advocate Notary attained finality.

4.2) The Petitioner preferred a Criminal Revision Application No. 100 of 2014 against the Order passed by learned JMFC, Kalyan on 6th March 2014. The Ad-hoc District Judge-1 and Additional Sessions Judge, Kalyan by Order dated 12th March 2015 was pleased to dismiss the said Revision Application.

5) Mr. Siddharth Jha, learned Advocate for the Petitioner submitted that :-

5.1) The Petitioner agreed to acquire 82% share in the partnership business of M/s. Ashutosh Developers and in the said process, the Petitioner and his wife Mrs. Bhaavesha Mahesh Lalchandani became partners of M/s. Ashutosh Developers. That, the Petitioner and his wife made a financial investment of Rs. 4,11,00,000/- in the business of M/s. Ashutosh Developers, out of which sum of Rs. 3,45,00,000/- was paid to Mr. Arjun Annaji Patil and other land owners and Rs. 66,00,000/- was shared between Respondent No. 1 and Mr. Aniruddhkumar S. Pathak. That, the monies invested by the Petitioner were utilized to settle the Special Civil Suit No. 66 of 2010 filed by the

Respondent No. 1 in the name of M/s. Ashutosh Developers. That, consent terms were filed in the said suit on 7th September 2010, and an amount of Rs. 3,45,00,000/- was paid to the original land owners and the suit was decreed.

5.2) By way of the registered admission cum retirement deed dated 3rd September 2012, Respondent No. 1 and Mr. Aniruddhkumar S. Pathak, as well as the wife of the Petitioner, retired from the partnership firm of M/s. Ashutosh Developers. That, Mr. Nandlal Matlani was inducted into the partnership firm. That, land owners Mr. Arjun Annaji Patil and others, on 5th September 2013, executed the Power of Attorney in favour of the Petitioner, in which it has been clearly admitted that the land owners received a sum of Rs. 3,45,00,000/-.

5.3) Respondent No. 1 after receiving money from the Petitioner, created further third party rights in respect of the same land, which constitutes the offence of cheating. The conduct of Respondent No. 1 is, in fact, clearly dishonest, as after accepting money from the Petitioner, Respondent No. 1 created third party rights in respect of the same land in favour of Mr. Sanjay Talreja and others on 15th August 2010 and 1st February 2011. After receiving information and documents under an RTI application, on 13th February 2015, the Petitioner lodged an FIR against Respondent No. 1 with the Central Police Station, Ulhasnagar, being FIR No. I-81/2015 under Section 420 of the IPC.

5.4) Respondent No. 1, after executing the document, is now claiming

ignorance. It is well settled that law creates a presumption that a person who fixes his signature on a document has read and understood the contents thereof. Respondent No. 1 is an educated person and cannot claim ignorance in respect of the admission cum retirement deed dated 3rd September 2012. The criminal complaint does not refer to the deed of reconstitution dated 11th August 2010, in which the erstwhile partners of M/s. Ashutosh Developers diluted their stakes in favour of the Petitioner and his wife to the extent of 82%. The Respondent No.1 has suppressed relevant and vital documents and facts from the Court issuing process. The Respondent No. 1 has suppressed vital facts and information in the complaint. The Court has been misled.

5.5) The Order dated 6th March 2014 is a cryptic and non-speaking Order. No reasons have been given. The Order does not disclose the application of the judicial mind. The deed of admission-cum-retirement deed dated 3rd September 2012 has been signed by Respondent No. 1 and also Mr. Aniruddha Kumar Pathak. Admittedly, the Petitioner has invested an amount of Rs. 4,11,00,000/- which has been used by Respondent No. 1 to settle Special Civil Suit No. 66 of 2010.

5.6) Learned Sessions Judge has not appreciated the facts in the right perspective and dismissed the Revision Application by merely stating that there exists a prima facie case against the Petitioner.

5.7) The present case is clearly a vexatious and malicious prosecution. The main ground, on which the case stands, is that, Respondent No. 1 did not

understand the English language. The said stand is a totally dishonest stand and is completely falsified by the fact that the Respondent No.1 is aware of English language as the complaint dated 30th December 2013 filed by Respondent No. 1 to the Superintendent of Police (Rural), Thane and the complaint filed before the Magistrate's Court is in English language. Thus, it is clear that Respondent No.1 is well conversant with English language. The Respondent No.1 has approached the Court with malicious and dishonest intentions. There is a clear suppression of the true and correct facts.

5.8) The other partner, Mr. Pathak, has not raised any grievance in respect of the said signatures. The complaint against the Notary Public, Shri Tarte, has been dismissed. The challenge to the said order is also dismissed. Only the Petitioner is being prosecuted.

5.9) Setting the criminal law in motion is a serious matter and the issuance of process cannot be reduced to an empty formality. Relying on a catena of judgments including *Priyanka Srivastava v. State of U.P.*, reported in (2015) 6 SCC 287, *Lalankumar Singh v. State of Maharashtra*, reported in (2023) 236 Comp Cas 741, *JM Laboratories v. State of A.P.*, reported in 2025 SCC OnLine SC 208, and *Mehmood Ul Rehman v. Khazir Mohammad Tunda*, (2015) 12 SCC 420, it was argued that a Magistrate exercising powers under Section 156(3) or taking cognizance under Section 204 of the CrPC must actively apply their judicial mind to the complaint and evidence to determine if sufficient grounds exist to proceed. This application of mind must be

explicitly reflected in the order itself; consequently, non-speaking or mechanical orders that fail to record reasoning are inherently bad in law and must be set aside.

5.10) Furthermore relying on the Supreme Court's ruling in *Rekha Sharad Ushir v. Saptashrunji Mahila Nagari Sahkari Patsansta Ltd., reported in 2025 SCC OnLine SC 641*, the Petitioner contended that suppression of material facts or documents by the complainant fundamentally vitiates the proceedings. If a complainant deliberately conceals the crucial and relevant facts germane to matter and thereby prevents the Magistrate from properly scrutinizing the correct and complete facts and allegations during the Section 200 CrPC inquiry, then initiating criminal proceedings based on such wilful suppression constitutes a gross abuse of the judicial process, rendering both the underlying complaint and any subsequent order of cognizance entirely unsustainable. The Order is thus liable to be quashed.

6) Mr. A. K. Upadhyay, learned Advocate for the Respondent No. 1 submitted that:-

6.1) A prima facie case against the Petitioner is clearly made out under Sections 418, 420, 465, 466 and 468 of the IPC. That, the Order of issuance of process has been passed after recording the verification and after going through the complainant's documents. The specific case of Respondent No. 1 is that, the document was signed without reading the same. That, signatures on Form-E are not of Respondent No. 1 and the partner Mr. Aniruddha Kumar

Pathak.

6.2) The case of Respondent No. 1 is that, Form-E which was submitted to the Registrar of the firm was a forged document and that Respondent No. 1 and/or the partner had never signed on the said Form-E. That, the deed dated 3rd September 2012 has been executed by misrepresentation.

6.3) That, Order of issuance of process has reasons and cannot be faulted with. It is not necessary that the Magistrate has to explicitly state the reasons for issuance of process. What is required to be seen at the time of issuance of process is that some material is available on record to proceed against the accused.

6.4) The learned Advocate for Respondent No. 1 placed reliance on the decision of the Hon'ble Supreme Court in the case of *Kanti Bhadra Shah v. State of W.B.*, reported in (2000) 1 SCC 722 and *Bhushan Kumar v. State (NCT of Delhi)*, reported in (2012) 5 SCC 424, to submit that there is no statutory mandate in the Code of Criminal Procedure requiring a Magistrate to record detailed reasons when issuing process or framing a charge. It was contended that, the CrPC explicitly necessitates written reasons only when an accused is being discharged, whereas the very act of issuing a summons or framing a charge inherently signifies the Magistrate's *prima facie* satisfaction that sufficient grounds exist to proceed. Furthermore, compelling Magistrates to write exhaustive orders at such interlocutory stages would unnecessarily

burden trial courts and delay proceedings, establishing the settled legal position that a summoning order cannot be invalidated or quashed solely on the ground that it lacks detailed reasoning.

REASONS

7) Perused the entire complaint. The Complaint proceeds on the basis that, Respondent No.1 does not know English language and based on the representation made by the Petitioner the admission-cum-retirement deed dated 3rd September 2012 was signed without reading it. It was further contended that, even the Petitioner did not read out the deed to them. The next contention of Respondent No.1 is that, the signatures of the Petitioner and Mr. Pathak on Form- E are forged. On the other hand, the Petitioner contends that, the Petitioner under a negotiated deal and agreement with Respondent No.1 and Mr. Aniruddkumar S. Pathak invested by way of financial assistance/investment a total amount of Rs. 4,11,00,000/- in the business of the partnership firm M/s. Ashutosh Developers, of which Respondent No.1 and Mr. Aniruddhkumar S. Pathak were partners. The record indicates that, out of the said amount of Rs. 4,11,00,000/-, an amount of Rs. 3,45,00,000/- was paid to the land owners i.e Mr. Arjun Annaji Patil and other land owners in Special Suit No. 66 of 2010. Based on the said payment the parties entered into consent terms, the suit was settled and ultimately decreed in favour of the firm. The balance amount of Rs. 66,00,000/- was shared between the partners i.e Respondent No.1 and Mr. Aniruddhkumar S. Pathak. That, after accepting substantial amount of Rs. 4,11,00,000/- and utilizing it

for completing the transaction and settling litigation, the Respondent No. 1 has conveniently and at a belated stage raised untenable allegations with mala fide intentions.

8) Before considering the matter any further, it would be necessary to consider a few facts which emerged during the course of arguments.

8.1) On 22nd November 2007, a Partnership firm by the name of M/s Asutosh Developers was formed with the Respondent No. 1 and Mr. Pathak as partners.

8.2) On 20th May 2008, M/s Asutosh Developers, executed a Development Agreement and consent deed with Shri Arjun Anaji Patil and 25 other residents of Titwala, in respect of certain lands in village Manda, Titwala, Kalyan District Thane, totally admeasuring 63,970 sq. mtr. On 22nd January 2009 a Deed of Confirmation was executed between the M/s Ashutosh Developers and the landowners which was registered before the Sub-Registrar, Kalyan-2 on 22nd January 2009 bearing Registration No. 420 of 2009.

8.3) On 19th January 2010, the landowners entered into an Agreement for sale executed with Mr. Jitendra Mohandas Lalchandani and Mr. Hari Mulchand Bhatia.

8.4) On 12th February 2010, M/s Ashutosh Developers i.e the partnership firm, filed Special Civil Suit No. 66 of 2010 against the landowners, seeking specific performance of the Development Agreement and a declaration that the same is valid, legally binding and subsisting.

8.5) On 11th August 2010, M/s Ashutosh Developers, was reconstituted vide a Deed of Reconstitution, inducting the Petitioner i.e Mr Mahesh Lalchandani and his wife i.e Mrs Bhavesha Lalchandani as partners. The Petitioner and his wife infused/invested an amount of ₹4,11,00,000/- into the firm, out of which an amount of ₹3,45,00,000/- was utilized for payments to the landowners, and an amount of ₹66,00,000/- was allocated/shared between the Respondent No.1 and Mr. Aniruddkumar Phatak.

8.6) On 15th August 2010, by a Deed of Reconstitution, Respondent No.1 and Aniruddha Pathak, illegally admitted other individuals namely i) Sanjay Parmanand Talreja, ii) Parmanand Shrichand Talreja, and iii) Bhupendra Maruti Bhandari as partners in the said partnership firm.

8.7) Consent Terms dated 7th September 2010 were executed between Ashutosh Developers and the landowners in Special Civil Suit No. 66 of 2010. Under these terms, the Development Agreement dated 20th May 2008 was affirmed as valid and subsisting, and the firm undertook to pay ₹3.45 Crores to the landowners.

8.8) On 13th September 2010 one Mr. Hari Bhatia and Mr. Jitendra Lalchandani instituted Special Civil Suit No. 401 of 2010 against the landowners, seeking specific performance for the execution of a Sale Deed based on the prior Agreement for sale dated 19th January 2010.

8.9) On 3rd September 2012, based on the investments made by the Petitioner, the structure of the firm i.e Ashutosh Developers was altered by an

Admission-cum-Retirement Deed, whereby, Respondent No. 1, Mr. Pathak, and Mrs. Bhavesha Lalchandani retired from the firm, and Mr. Nandlal Motlani was inducted as a new partner.

8.10) On 9th January 2013, the Special Civil Suit No. 401 of 2010 was dismissed as the plaint was rejected under Order VII Rule 11 of the Code of Civil Procedure. An appeal against this order is pending in the High Court.

8.11) On 5th September 2013, the landowners executed a Power of Attorney in favour of Mahesh Lalchandani, wherein they accepted the fact that all the monies due under the Consent Terms of Special Civil Suit No. 66 had been paid by Mr Mahesh Lalchandani.

8.13) On 13th February 2015 after receiving information under the RTI Act, the Petitioner in respect of the said acts, has filed a FIR No I-81 of 2015 under section 420 of the Indian Penal Code.

9) The record indicates that, the Special Civil Suit No. 66 of 2010 instituted by the partnership firm M/s. Ashutosh Developers was settled vide consent terms dated 7th September 2010 and was decreed. The Respondent No.1 and his partner Mr. Anuruddhkumar Pathak were in need of financial assistance and had therefore, approached the Petitioner, in the year 2010 who invested an amount of Rs. 4,11,00,000/-. Out of the said monies i.e Rs 3,45,00,000/- was paid to the landowners on behalf of M/s Ashutosh Developers and an amount of Rs 66,00,000/- was paid to Respondent No.1 and Mr. Aniruddhkumar S. Pathak.

10) The Petitioner claims his rights under the registered admission cum retirement deed dated 3rd September 2012. It is the contention of the Petitioner that, Respondent No.1, Mr. Aniruddhkumar Pathak as well as the Petitioner's wife retired from the partnership firm M/s. Ashutosh Developers and one Mr. Nandlal Matlani were inducted into the partnership firm. I have also noted that, pursuant to the payments made by the Petitioner, the land owners Mr. Arjun Annaji Patil and others executed a Power of Attorney dated 5th September 2013 in favour of the Petitioner. Perusal of the Power of Attorney would indicate that, the land owners have specifically accepted that they received an amount of Rs. 3,45,00,000/- from the Petitioner. The Power of attorney also makes reference to the deed of 3rd September 2012 and the fact that Respondent No.1, Mr. Aniruddhkumar Pathak as well as the Petitioner's wife retired from the partnership firm M/s. Ashutosh Developers and one Mr. Nandlal Matlani were inducted into the said partnership firm. The aforesaid facts and documents referred to clearly indicate that the Petitioner has invested an amount of Rs 4.11 crores in the said firm.

11) It appears that, Respondent No.1 after receiving monies from the Petitioner created certain third party rights in respect of the said land in favour of one Mr. Sanjay Talreja and others on 15th August 2010 and 1st February 2011. The Petitioner has filed an FIR being FIR No. I-81/2015 against Respondent No.1 which is registered with the Central Police Station, Ulhasnagar on 13th February 2015 under Section 420 of the IPC.

12) During the course of the arguments one of the main contentions of the Respondent No.1 was that, the document has been executed by the Petitioner in English language, a language which is unknown to the Respondent No.1. It is the contention of Respondent No.1 that, he does not understand English language and he signed the document without reading or understanding the contents thereof.

13) Considering the facts of the present case, the said contention prima facie appears to be made with dishonest and malafide intentions, and is a clear afterthought. The argument is made only to be rejected. The record indicates that, Respondent No.1 has himself filed the following legal proceedings/complaints which are in English language.

- i) Complaint dated 30th December 2013 filed by Respondent No.1 Superintendent of Police (Rural), Thane.
- ii) Complaint before the Magistrates Court bearing No. RCC 174 of 2014.

14) I have also noted that, none of the legal proceedings make a mention that, the contents of the complaints are read and explained to Respondent No. 1 in the language known and understood by Respondent No.1. If the contention of Respondent No.1 is to be accepted, the immediate consequence would be that the present criminal proceedings are untenable and that Respondent No.1 has signed the same without understanding the same. I have noted that, Respondent No.1 has admitted and accepted that he

signed the deed. The signature is admitted. It appears that the Respondent No. 1 after receiving substantial monies in a convenient manner has contended or formed the basis for contending that, the Petitioner is guilty for an alleged offence of cheating and forgery. Considering the peculiar facts of the present matter, it prima facie appears that, the contention of Respondent No.1 is dishonest and malafide.

15) It would also be necessary to note here that, the other partner i.e. Mr. Aniruddhkumar Pathak has not filed any complaint nor raised any objection in respect of admission cum retirement deed dated 3rd September 2012 or the alleged forgery of Form E. Perusal of the complaint which is filed in the present case, which is also in English language indicates that the Respondent No.1 was admittedly in need of financial assistance for development of the land in question and that the Petitioner had offered financial assistance to Respondent No.1. The complaint is filed only on 10th February 2014, when the genesis of the dispute dates back to 3rd September 2012.

16) I have already noted in paragraph 10 herein, the facts which have emerged during the arguments which were advanced on behalf of the parties. The facts pertain to the documents executed with regard to the property in question and the legal proceedings initiated by the parties concerned in respect thereof. Perusal of the Complaint filed by Respondent No.1 would indicate that, many relevant and crucial facts have not even been referred to

by Respondent No.1 in the Complaint and not truly stated. This in my considered opinion would affect the decision making process and judicial application of mind as regards the criminal proceedings. Some of the facts which have not been mentioned at all :- (i) the complaint does not refer to the fact that, an amount of Rs. 4,11,00,000/- was invested by the Petitioner in or around year 2010, out of which an amount of Rs 3,45,00,000/- was paid to the landowners in question to settle litigation and Rs 66,00,000/- was in fact paid to the Respondent No.1 and Mr Phatak; (ii) The complaint does not refer to the deed of reconstitution dated 11th August 2010 between Respondent No.1, Mr. Aniruddhkumar Pathak, Petitioner and his wife. (iii) The complaint does not refer to the civil litigation i.e. Civil Suit No. 66 of 2010 filed on 12th February 2010 by Respondent No.1 in the Civil Suit. The suit sought specific performance of the development agreement dated 20th May 2008. It is in this suit that the Petitioner has paid to the land owners the sum of Rs. 3,45,00,000/-. (iv) The complaint does not refer to the consent terms dated 7th September 2010 in Civil Suit No. 66 of 2010 where the amounts of Rs.3,45,50,000/- was paid to Mr. Arjun Annaji Patil and other land owners; (v) the complaint does not refer to the Power of Attorney dated 5th September 2013 wherein the land owners admit having received the amount of Rs. 3,45,00,000/-. I have also noted that, Respondent No. 1 has dealt with the lands in the year 2010 and 2011, when the property was sold to one Mr. Talreja.

17) The aforesaid conduct of Respondent No.1 is prima facie indicative of the fact of suppression and a clear attempt to mislead the Court. The complainant has not placed on record the true, complete and relevant facts in respect of the transaction. The acts of the Respondent No. 1, prima facie appears to be malafide. The Respondent No. 1 has not stated all the facts. It appears that a purely commercial dispute has been attempted to be converted to a criminal prosecution by suppressing facts, raising false and frivolous allegations at a belated stage. The Respondent No. 1 has after taking financial advantage and benefit under the Deed of 3rd September 2012, accepting monies has alleged criminal offences such as under Sections 418, 428, 465, 466, 468 read with 34 of IPC. The Order of Process has been issued in such circumstances, on the basis of incomplete facts and by suppressing material and relevant facts. In this regard a useful reference can be made to the Judgment of the Hon'ble Supreme Court in the case of *Rekha Sharad Ushir v. Saptashrunji Mahila Nagari Sahkari Patsansta Ltd.*, reported in 2025 SCC OnLine SC 641 has 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.”

(emphasis added)

The observations of the Hon'ble Supreme Court are squarely applicable to the

facts of the present case. The Respondent No.1 has suppressed relevant and crucial facts which are germane to the matter and the decision making process. In my considered opinion the case of the Respondent No. 1 is clearly based on falsehood and suppression of material and relevant facts. The criminal process has been initiated by practicing suppression. The process of the criminal Courts cannot be permitted to be misused to achieve personal agenda or misused to pressurize and arm twist any person to give into some illegal demands in a purely commercial transaction. A person who basis a case on falsehood and dishonest suppression and attempts to misuse the legal framework cannot be permitted to approach the Court. As observed by the Hon'ble Supreme Court in the case of *Rekha Sharad Ushir (Supra)* “... *He can be summarily thrown out at any stage of the litigation.*”

18) It is also necessary to peruse the Order of Issuance of Process dated 6th March 2014 which reads as under :

“ORDER

Heard, the complainant and gone through the documents. On considering the submissions and documents prima facie u/s 418,420,465,466 and 468 is made out against accused No.1 hence issue process against accused No.1 u/s 418,420,465,466 and 468 of IPC.

The case against accused No.2 is dismissed as no case is made out against him.”

19) The learned JMFC, Kalyan, in the order of issuance of process, though has stated that the complainant was heard and that he has gone through the documents the Order prima facie does not mention any reasons

nor does it indicate or reflect the judicial application of mind. I have noted that the reason as to why the case has been dismissed against Accused No. 2 is also not mentioned.

20) It is settled law that the Order of issuance of process must contain reasons and reflect any application of the judicial mind. The Order is a complete non reasoned Order. It is not necessary that, there should be detailed reasons in the said Order. What is required is that, the Order itself should reflect the application of judicial mind. It is further pertinent to note that, the Order of Issuance of Process has been passed without the true, complete and correct facts being placed before the Court. It appears that, Respondent No.1 has suppressed legal proceedings, Orders and consent Order passed therein. The Respondent No. 1 has suppressed the financial advantage which has been received by the Respondent No.1 and or the partners or the said firm. Substantial amount of Rs. 4,11,00,000/- has been invested by the Petitioner. After receiving the invested amount from the Petitioner, Respondent No.1 has dealt with and created third party rights in respect of the same property for which a FIR has been filed in the year 2015. In my considered opinion, the said proceedings and the Orders passed therein are crucial, relevant and germane to the matter in issue. It is not that incidental, irrelevant and inconsequential matters have been suppressed. As observed by the Hon'ble Supreme Court recording the complainant's statement on oath under Section 200 of the Code of Criminal Procedure is not an empty

formality. The object of recording complainant's statement is to ascertain the truth. It is only after ascertaining the truth and verifying the facts that, the Magistrate can apply his mind to ascertain whether there is sufficient ground in proceeding against accused. The Hon'ble Supreme court in the case of *Pepsi Foods Ltd. v. Judicial Magistrate*, reported in (1998) 5 SCC 749 has observed that setting criminal law in motion is a matter of grave concern and has serious consequences on the life, liberty and well being of an individual. Considering the facts of the present case, it appears that the Order of Issuance of process is passed on incomplete facts which the Respondent No.1 has suppressed in the complaint. The Court has been clearly misled.

21) Respondent No.1 in the course of arguments has tendered a compilation of document containing form-E submitted before the Registrar of Firms and also a private hand writing experts opinion. Prima facie it appears that, the expert opinion was sought independently before even filing the complaint and on photocopies. In any event a expert opinion is not itself substantive piece of evidence. In the peculiar facts of the present matter there is a clear case of suppression of critically relevant and crucial facts. It prima facie appears that a civil land /development issue has been converted to a criminal prosecution for reasons best known. There are multiple litigations and transactions in respect of the same property. The Respondent No. 1 after receiving substantial amount of monies has dealt with the property and created third party rights.

22) Perusal of the Order dated 12th March 2015 passed in Criminal Revision No. 100 of 2014 indicates that, the learned Sessions Court while dismissing the Revision Application has not considered the facts in their entirety. The relevant facts have been suppressed in the complaint itself. A unreasoned Order has been considered to be a reasoned Order reflecting judicial application of mind. The Sessions Court while observing that *“What Magistrate has to verify that he has to apply his mind towards the allegation made in the complaint and the documents filed in support of the case.”* has failed to consider that the entire correct and complete facts have been suppressed. If one takes into consideration the Court Orders the civil litigation, consent terms and pleadings and documents filed in the litigation and consequential documents executed it is clear that a purely commercial dispute has been stretched and converted into a criminal prosecution at a belated stage. Most importantly the conduct of Respondent No. 1 in creating third party rights after accepting money from the Petitioner speaks volumes. I have also noted that the other partner Mr. Pathak has filed no complaint nor has any grievance.

23) In my opinion, most importantly it prima facie appears that Respondent No. 1 has suppressed material and relevant facts in the complaint which are of crucial relevance to the controversy in issue, and have a direct bearing on the matter and the decision making process. The entire facts were not before the Court. Based on incomplete and convenient facts, Respondent

No.1 has sought to approach the Court, invoke and initiate criminal prosecutions in respect of matters which are otherwise at the highest purely civil and contractual disputes and issues. The mala fide intention and abuse of the process of law is clearly evident. In my considered opinion in the present case Respondent No. 1 has suppressed the material facts of the case, mislead the Court and abused the process of law. In any event, the Order of issuance of process is a bereft of reasons and therefore on both counts unsustainable.

24) In view of the above facts and circumstance, submissions advanced by the learned counsels for the parties and the law as laid down by the Hon'ble Supreme Court, I am of the considered opinion that the facts of the present case warrant interference of this Court. A prima facie case has been made by the Petitioner to seek discharge. Allowing the continuation of the criminal proceedings against the Petitioner would amount to abuse of the process of law. In my considered view, it will be in the interest of justice and to secure the ends of justice, the Petitioner is discharged from the criminal proceedings.

25) Hence, I pass the following Order: -

i) Petition is allowed in terms of prayer clause (a).

(RANJITSINHA RAJA BHONSALE, J.)