**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.**
**BENCH AT AURANGABAD.**

**CRIMINAL APPEAL NO. 44 OF 2002**

The State of Maharashtra,
through the P.S.I. Dhule,
Police Station, Dhule. … Appellant

*VERSUS*

1. Prakash babulal Bisava,
   Aged 40, R/o. Lane No. 2, Dhule.

2. Rajendra Bansilal Gujar,
   (Advocate) aged 28 years, Accused.
   R/o. Agra Road, Dhule. (Orig. respondent nos. 2 & 3)

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Mr P. G. Borade, APP for the appellant/State
Mr B. R. Warma, Advocate for respondents
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WITH
**CRIMINAL APPEAL NO. 47 OF 2002**

The State of Maharashtra,
through the P.S.I. Dhule,
Police Station, Dhule.
… Appellant

*VERSUS*

Vedu Damu Deore, ...Respondent
Aged 22, R/o. Yeshwant Nagar, Dhule. (Orig. accused no. 1)

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Mr P. G. Borade, APP for the appellant/State
Mr V. J. Dixit, Sr. Counsel i/b Mr S. V. Dixit, Adv for respondent No.2
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CORAM : **T. V. NALAWADE &**
**A. M. DHAVALE, JJ.**

RESERVED ON : 09.10.2017.
PRONOUNCED ON : 13.10.2017.

**JUDGMENT (PER A. M. DHAVALE, J.) :**

1. Both these appeals arise out of the common judgment passed by ld. Chief Judicial Magistrate, Dhule in RCC 201/1991 on 31.08.2001, whereby Vedu Deore (A1) was convicted u/s 419 IPC, 205 IPC & 467 IPC and accused nos. 2 & 3 were acquitted. In Cri. Appeal No. 44/2001, the State seeks conviction of accused nos. 2 and 3 for offences u/s 419, 205, 467 r/w 34 of IPC. In Cri. Appeal No. 47/2002, the State seeks enhancement of sentence of imprisonment of one month and fine of Rs. 500/-, in default, SI for 15 days for offence u/s 419 of IPC, SI for one month and fine of Rs. 200/-, in default, to suffer simple imprisonment for 10 days u/s 205 of IPC and SI for six months and to pay fine of Rs. 300/-, in default, to suffer SI for 10 days u/s 467 of IPC.

2. The facts relevant for deciding these appeals may be stated as under :

On 26.07.1991, the Judicial Magistrate First Class, Court No. 11, Dhule, PW1-Dilip Bhuyarkar lodged written FIR at City Police Station, Dhule. In fact it was an order passed in Summary Criminal

Case No. 75/91 which was registered as Crime No. 280/91, u/s 416, 205, 419 r/w 34 of IPC. As per FIR, PW1-Bhuyarkar was conducting a criminal case under Prevention of Gambling Act against one Ramesh Tukaram Borse. When he was recording evidence of Police Constable - Najim Shaikh-PW6, he told that the accused in the witness box was not Ramesh Borse but his name was Vedu Deore (A1). Mr Bhuyarkar made inquiry with said accused and he twice disclosed his name as Ramesh Tukaram Borse with address as Galli No. 5, Dhule. But later he admitted that his name was Vedu Damu Deore. That time, accused no. 3 - advocate by name Shri. R. B. Gujar representing Ramesh Borse was present there and he had earlier filed Vakalatnama. The evidence recording had begun on that day at 4:30 pm. After the charge was framed u/s 12A of the Bombay Gambling Act on the same day in presence of advocate R. B. Gujar, the charge was explained to accused no. 1 - Vedu Deore (A1) and he pleaded not guilty. He signed the statement of the accused. That time, advocate R. B. Gujar did not tell the court that he was not accused Ramesh Tukaram Borse but a different person. When PW1-Bhuyarkar again made inquiry, the accused No. 1 Vedu present there told that his employer Prakash Bisava (A2) had told him to appear on behalf of Ramesh Tukaram Borse. The original accused was absent and Vedu Damu Deore impersonated himself as accused Ramesh Borse.

3. On the basis of the said FIR, the investigation was carried out. The statements of material witnesses were recorded. Material documents were also seized. After completion of investigation, the charge-sheet was submitted in the court.

4. Ld. Chief Judicial Magistrate, Dhule framed charge against all the three accused persons for offences u/s 419, 205, 467 r/w 34 of IPC at Exh. 12. The accused pleaded not guilty. The prosecution examined six witnesses namely; JMFC-Bhuyarkar, APP Vilas Kulkarni, Jr. Clerk and Peon and witness in the box Najim Shaikh. The ld. Chief Judicial Magistrate on the basis of the evidence held accused no. 1 guilty and convicted him and sentenced him as referred to above. Accused nos. 2 and 3 were acquitted. Hence these appeals.

5. Heard ld. APP Shri. Borade for the appellant and learned advocate Shri. Warma appointed for respondents No. 1 and 2.

6. Learned APP submitted that, there is convincing evidence of JMFC Bhuyarkar supported by evidence of other material witnesses to show that accused no. 1 impersonated himself as Ramesh Borse in another case where he was accused and he was helped by advocate R. B. Gujar (A3). He was sent by Prakash Bisava

(A2) to impersonate as Ramesh Borse. There is no reason to disbelieve the ld. JMFC. There is corroborative evidence of APP, Jr. Clerk, Peon and witness Police Constable - Najim Shaikh.

7. Per contra, ld. advocate Shri. B. R. Warma drew our attention to the evidence of police constable - Najim Shaikh. His evidence shows that, accused no. 3 - advocate R. B. Gujar was initially not present. Earlier the accused Ramesh Tukaram Borse was present and exemption was sought as he was not keeping good health. Mr. Warma submitted that, in the light of the facts, there is no reliable material against accused no. 3 - advocate R. B. Gujar. Therefore the judgment of acquittal of accused no. 3 – R. B. Gujar deserves no interference. He also argued that, since offence u/s 205 is specific offence and since there was no intention to cheat anybody, section 419 will not be attracted. Only offence u/s 205 of IPC deserves consideration.

8. Learned advocate Mr Warma for accused no. 2 argued that he was not present on the spot and the ld. Magistrate has acted only on the basis of statement of accused no. 1. He had not asked accused no. 1 to impersonate as Ramesh Borse.

9. Though not argued, it is necessary to consider bar u/s 195 of Cr.P.C. in respect of offence u/s 205 of IPC.

10. Hence, the points for our consideration with our findings thereon are as follows.

| Sr. No. | Points | Findings |
|---|---|---|
| 1 | Whether the prosecution on the basis of charge-sheet filed by the police is maintainable? | In the negative. |
| 2 | Whether there is sufficient material to show that accused nos. 2 & 3 have committed offence u/s 419, 205, 467 of IPC? | In the affirmative against accused nos. 3 u/s 205/34 of IPC only. |
| 3 | Whether the sentence imposed on accused no. 1 deserves to be enhanced? | No. |
| 4 | What order? | The appeals are dismissed. |

11. After hearing learned counsel and going through the record, the prosecution allegation disclosed is that, PW1 Bhuyarkar, JMFC, was conducting Criminal Case No. SCC 75/91 u/s 12A against Ramesh Tukaram Borse. On 25.07.1991, when the case was fixed for recording plea and Ramesh Borse was absent and accused Vedu Damu Deore attended the court by impersonating himself as Ramesh

Borse, he pleaded not guilty and signed the plea. He was represented by accused no. 3 advocate R. B. Gujar, who also did not bring this fact to the notice of the court. Ramesh Borse and Vedu Deore were the employees of one Prakash Bisava (A2) and he had directed accused no. 1 to attend the case on behalf of Ramesh Borse. Accused no. 1 - Vedu Deore initially told the Judge twice that he was Ramesh Borse, but subsequently admitted that he was Vedu Damu Deore. When the witness PW6 Shaikh Najim was examined, he stated that the accused in the witness box was not Ramesh Borse. On inquiry by the court, the accused in the box admitted that he was Vedu Damu Deore.

12. PW1-Dilip Bhuyarkar was JMFC, who on disclosure of this fact, passed a written order, which is treated as FIR and it is at Exh.21. It seems that, Mr Bhuyarkar was not having summary powers and instead of conducting SCC No. 75/91 as summons case, he framed charge and accused Vedu Damu Deore has signed the plea as Ramesh Borse.

13. Ld. JMFC Bhuyarkar has led evidence as above and has also stated in the FIR that accused no.1 stated before him that his employer Prakash Bisava had asked him to attend the case against Ramesh Borse on his behalf. It is accordingly recorded in the FIR.

14. The above facts disclose a case of false impersonation for the purpose of act in a criminal prosecution, which is clearly covered by Section 205 of IPC. Offence u/s 419 is similar offence. There is additional element of cheating which is defined u/s 415 as follows.

> ***S.415. Cheating.*** *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*

15. It is apparent that, accused no. 1-Vedu Damu Deore has impersonated but there was no fraudulent or dishonest intention on his part so as to deceive the Judge so that he should deliver any property to any person or to consent for retention of property by any person. There was intention to do or omit to do something by the Judge but it was not causing or likely to cause any harm to the Judge in body, mind, reputation or property. We find that, the act of accused no. 1 even if accepted at the face value does not disclose all the ingredients of Section 415 of IPC and therefore provisions of Section 419 of IPC were clearly not attracted.

16. In this case, charge is also framed u/s 467 in respect of forgery of valuable security. The allegations that, Vadu Deore has signed a plea of not guilty. It is not a document which can be called as valuable security. It does not create any rights in favour of accused no. 1 Vedu Deore. Section 467 is basically a forgery for the purpose of acquiring monetary gains or interest in some landed property. It is not applicable to a case wherein one person has signed a plea of not guilty in place of another. Therefore, provisions of Section 467 were also not attracted.

17. However, the alleged act of accused no. 1 amounted to an offence u/s 205 of IPC.

18. This offence has taken place in connection with a judicial proceedings. It is a contempt of lawful authority of the Judicial Magistrate. The ld. Judicial Magistrate has rightly taken action against Vedu Deore. However, the provisions of Section 195 Cr.P.C. were not followed. Section 195 of Cr.P.C. reads as follows :

> **195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-**
>
> shall take cognizance-

(a) Not applicable.

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code,(45 of 1860) namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (I) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

2. ……….

19. In **Abdul Rehman and others v. K. M. Anees-Ul-Haq 2012 Cri.L.J. 1060 SC**, it is held in para 14 as under :

*14. ……. Once it is held that bail proceedings amounted to judicial proceedings the same being anterior in point of time to the taking of cognizance by the Metropolitan Magistrate, there is no escape from the conclusion that any offence punishable under Section 211, IPC could be taken cognizance of only at the instance of the Court in relation to whose proceedings the same was committed or who finally dealt with that case.*

20. As held in **State of Punjab Vs. Rajsingh, AIR 1998 SC 768**, though the police could have investigated the offence, they could not have submitted the charge-sheet and the court could not have taken cognizance of the charge sheet filed by the police. It was for Mr Bhuyarkar to personally file the complaint to which the papers of investigation could have been appended. In view of the bar of Section 195 of Cr.P.C. the entire prosecution is liable to be quashed.

21. Apart from above facts, we also find that the accused no. 2 Prakash Bisava was prosecuted only on the basis of statement of co-accused. Though such a statement is admissible u/s 30 of Evidence Act, it is not a substantive piece of evidence. It can be used only for the purpose of corroboration. PW1 has stated that, Vedu Deore told him that Prakash Bisava told him to appear in the court on behalf of original accused Ramesh Borse. It is capable of two meanings. The first one is that, Vedu Deore was told to impersonate as Ramesh Borse and second is that, since Ramesh was unable to attend the court, he should attend the court on behalf of Ramesh Borse. The latter part cannot be an offence. The evidence does not show that Prakash Bisava had told him to sign the papers as Ramesh and attend the dock of the accused as Ramesh Borse. He was merely asked to appear in the court on behalf of Ramesh Borse. In that case, Vedu Deore could have filed an application on behalf of Ramesh Borse that

accused was unable to attend the court and could have sought adjournment. We, therefore, find that there is no material sufficient enough to hold accused no. 2-Praiash Bisava for any offence.

22. As far as accused no. 3 - advocate R. B. Gujar is concerned, PW1-Bhuyarkar has stated that he was present and when evidence of police constable Shaikh Najim was being recorded and when ld. APP asked witness to identify the accused, PW6 Najim Shaikh told him that accused in the box was not Ramesh Borse. That time, PW1 Bhuyarkar suspected identity of accused present in the court and he started making inquiry. Initially accused no. 1 - Vedu Deore disclosed his name as Ramesh Borse and after deep inquiry, he disclosed his true name as Vedu Deore. On the date of incident i.e. 25.07.1991, PW1 had framed charge against the accused and the statement of the accused Exh. 24 was recorded. It was signed by Vedu Deore. In cross-examination, PW1 has admitted that at the start of the evidence, he was not certain whether accused no. 1 was sitting in the dock right from the start of evidence. He admitted in cross that, signature on plea as Ramesh Borse was not made before him. On the very day, one application for cancellation of warrant was submitted but the same was not produced. That time, advocate Dilip Pingle was attending the court. Ramesh Borse had engaged two advocates Dilip

Pingle and R. B. Gujar. They were jointly working for him. Mr Bhuyarkar could not say whether he had cancelled the warrant against Ramesh Borse subject to penalty of Rs. 500/-. He denied that, R. B. Gujar was not present for conducting the case. Evidence of PW1 clearly shows that, twice Vedu Deore disclosed his name as Ramesh Tukaram Borse and at that time advocate R. B. Gujar was present. It was his duty to tell the court that he was not his client but he was somebody else. Accused no. 3 - R. B. Gujar committed deliberate omission which could have amounted to an offence however since no complaint was lodged by Bhuyarkar as per Section 195 of Cr.P.C., the whole proceedings are required to be quashed.

23. The evidence of PW1 Bhuyarkar is supported by APP Vilas Kulkarni (PW2). He stated that, when name of Ramesh Borse was called out, advocate R. B. Gujar entered the court hall and plea was recorded in his presence at 3:45 pm. He stated that advocate R. B. Gujar had signed such plea which is factually not correct.

24. PW3-Jr. Clerk - Maharu Borse has also stated that, advocate R. B. Gujar was present when evidence of Najim Shaikh was being recorded. His cross-examination reveals that, PW4 - A. T. Chaudhary is a Stenographer. He had typed the charge and the accused had

signed the same in his presence. He had stated that advocate R. B. Gujar was present at the time of the incident. His evidence that, the Judge made inquiry with accused is material omission, but even if it is discarded there is deliberate omission on the part of the accused no. 3 - R. B. Gujar in not disclosing that the accused in the dock was not Ramesh Borse. PW5 Peon - Pralhad Vispute has also stated that, R.B. Gujar was present at the time of incident. similarly, PW6 Police Constable - Najim Shaikh has also deposed the incident. He has stated that, advocate for the accused was not present but Shri. Gujar entered the court hall when his evidence was partly recorded.

25. It is well settled that the evidence of JMFC deserves highest respect and whatever he has observed as to what happened in the court hall during the proceedings has conclusive value. Therefore, the presence of advocate R. B. Gujar at the time of incident cannot be disputed. PW1 cannot be disbelieved on some stray admission of other witnesses. However, since Mr Bhuyarkar has not filed complaint as contemplated u/s 195 of Cr.P.C., the proceeding is barred. There is no escape to the prosecution on the ground that the FIR itself was filed by PW1 Bhuyarkar. In some provisions, the court is permitted to take cognizance either on complaint or on the basis of charge-sheet, if the FIR is filed by the competent person. No such

provisions is made u/s 195 of Cr.P.C. and therefore cognizance of offence u/s 205 of IPC taken by the ld. Judge is hit by Section 195 of Cr.P.C. Hence, the order.

**ORDER**

(i) Criminal Appeals No. 44/2002 and 47/2002 are dismissed.

(ii) The R&P of the trial Court be sent back to the trial Court.

**[ A. M. DHAVALE ]**
**JUDGE**

**[ T. V. NALAWADE ]**
**JUDGE**

sgp