

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.542 OF 2019
WITH
CRIMINAL APPLICATION (APL) NO.543 OF 2019
WITH
CRIMINAL APPLICATION (APL) NO.594 OF 2019
WITH
CRIMINAL APPLICATION (APL) NO.951 OF 2019

CRIMINAL APPLICATION (APL) NO.542 OF 2019

1. Mr. Madan S/o. Madhukarrao Yerawar,
Aged about 55 years,
Presently Guardian Minister, Yavatmal District,
R/o. Awadhutwadi, Yavatmal,
Tq. & Dist. Yavatmal **(Original N.A. No.13).**
2. Mr. Amit S/o. Kamalkishor Chokhani,
Aged about 34 years, Occ. Business,
R/o. Saukar Peth, Yavatmal,
Tq. & Dist. Yavatmal **(Original N.A. No.14). ...APPLICANTS**

----- VERSUS -----

1. The State of Maharashtra, represented
through P.S.O. Awdhutwadi Police Station,
Godhani Road, Yavatmal,
Tq. & Dist. Yavatmal.
2. Ku. Ayushi Kiran Deshmukh,
Aged about 22 years, Occ. Education,
R/o. Bajoria Nagar, Yavatmal.
(Ori. Applicant/Complainant).
3. Chitranjan Gunwantrao Kolhe,
Aged about 64 years, Occ. Agriculturist,
R/o. Zadgaon, Tq. Ralegaon,
Dist. Yavatmal. **(Ori. N.A. No.1).**
4. Smt. Jaishri Diwakar Thakre,
Aged about 63 years, Occ. Household,
R/o. Umred, Tq. Umred, Dist. Nagpur.
(Ori. N.A. No.2).

5. Sau. Vijayshri Vijayrao Karekar,
Aged 57 years, Occ. Household,
R/o. Ranapratap Nagar,
Nagpur. **(Ori. N.A. No.3).**
6. Jayant S/o. Gunwantrao Kolhe,
Aged about 50 years, Occ. Agril & Service,
R/o. Nelki Society, Nagpur **(Ori.N.A.No.4).**
7. Rajshri @ Shweta Sanjayrao Deotale,
Aged about 49 years, Occ. Household,
R/o. Warora, Tq. Warora,
Dist. Chandrapur **(Ori.N.A. No.5).**
8. Sau. Tejshri Vijay Thute,
Aged about 44 years, Occ. Household,
R/p. Pratap Nagar, Wardha,
Tq. & Dist. Wardha **(Ori. N.A.No.6).**
9. Dilip S/o. Aanatrao Kolhe,
Aged about 55 years, Occ. Agril and Business,
R/o. Bajoria Nagar, Near Swami Samarth
Center, Yavatmal, Tq. & Dist. Yavatmal
(Ori. N.A.No.7).
10. Smt. Archana Wd/o. Shashi Shekhar Kolhe,
Aged about 52 years, Occ. Household,
R/o. Bajoria Nagar, Yavatmal,
Tahsil and Dist. Yavatmal **(Ori.N.A.No.8).**
11. Ashish S/o. Shashishekhar Kolhe,
Aged about 32 years, Occ. Agril,
R/o. Bajoria Nagar, Yavatmal,
Tq. & dist. Yavatmal **(Ori.N.A.No.9).**
12. Smt. Vaishali Balasaheb Kolhe,
Aged about 52 years, Occ. Agril,
R/o. Bajoria Nagar, Yavatmal,
Tq. & Dist. Yavatmal**(Ori.N.A.No.10).**
13. Amol S/o. Balasaheb Kolhe,
Aged about 30 years, Occ. Agril,
R/o. Bajoria Nagar, Yavatmal,
Tq. & Dist. Yavatmal **(Ori.N.A.No.11).**
14. Sau. Sheetal Ravi Dhote,
Aged about 29 years, Occ. Household,
R/o. Rajura Manikgarh, Rajura,
Dist. Chandrapur **(Ori.N.A.No.12).**

15. The then Deputy Superintendent of
Land Record, Land Record Office,
Near Tahsil Office, Tq. & Dist. Yavatmal
(Ori.N.A.No.15).
 16. The then Chief Officer,
Municipal Council, Yavatmal,
Tq. & Dist. Yavatmal (Ori.N.A.No.16).
 17. The then Sub Registrar (No.1) Office of
Sub Registrar, New Administrative
Building Premises of Collector Office,
Yavatmal, Tq. & Dist. Yavatmal
(Ori.N.A.No.17).
- NON-APPLICANTS.

WITH

CRIMINAL APPLICATION (APL) NO.543 OF 2019

1. Chitaranjan Gunvantrao Kolhe,
Aged about 64 years,
Occ. Agriculturist,
R/o. Zadgaon, Tq. Ralegaon,
District : Yavatmal.
2. Smt. Jayashree Diwakar Thakare,
Aged about 63 years, Occ. : Housewife,
R/o. Umrer, Tq. Umrer,
District : Nagpur.
3. Sau. Vijyshri Vijayrao Karekar,
Aged about 57 years, Occ. Household,
R/o. Ranapratap Nagar, Nagpur,
Tq. And District : Nagpur.
4. Jayant Gunvantrao Kolhe,
Aged about 50 years,
Occ : Agriculturist and Service,
R/o. NELCO Society, Nagpur,
Tq. And District : Nagpur.
5. Sau. Rajashree alias Sweta Sanjayrao Deotale,
Aged about 49 years, Occ.: Household,
R/o. Warora, Tq. Warora,
District : Chnadapur.

6. Sau. Tejashree Vijay Thute,
Aged about 44 years, Occ : Household,
R/o. Pratapnagar, Wardha,
Tq. And District : Wardha.
7. Dilip Anantrao Kolhe,
Aged about 55 years,
Occ. : Agriculturist and Contractor,
R/o. Bajoriya Nagar,
Near Swami Samarth Kendra,
Yavatmal, Tq. And District : Yavatmal.
8. Smt. Archana Shashishekhar Kolhe,
Aged about 52 years, Occ.: Household,
R/o. Bajoriya Nagar, Yavatmal,
Tq. and District : Yavatmal.
9. Aashish Sheshishekhar Kolhe,
Aged about 32 years,
Occ.: Agriculturist and Business,
R/o. Bajoriya Nagar, Yavatmal,
Tq. and District : Yavatmal.
10. Smt. Vaishali Balasaheb Kolhe,
Aged about 52 years,
Occ.: Agriculturist,
R/o. Bajoriya Nagar, Yavatmal,
Tq. and District : Yavatmal.
11. Amol Balasaheb Kolhe,
Aged about 30 years,
Occ.: Agriculturist,
R/o. Bajoriya Nagar, Yavatmal,
Tq. and District : Yavatmal.
12. Sau. Shital Ravi Dhote,
Aged about 29 years, Occ. Household,
R/o. Rajura Manikgarh, Rajura,
District : Chandrapur. **APPLICANTS.**

----- **VERSUS** -----

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Awadhutwadi,
District : Yavatmal.

2. Ku. Aayushi Kiran Deshmukh,
Aged about 22 years, Occ.: Education,
R/o. Bajoriya Nagar, Yavatmal,
Tq. and District : Yavatmal.
3. Madan Madhukar Yerawar,
Aged about 55 years, Occ.: Business/
Guardia Minister, Yavatmal,
District : Yavatmal.
4. Amit Kamalkishore Chokhani,
Aged about 34 years, Occ.: Business,
R/o. Sawkarpeth, Yavatmal,
District : Yavatmal.
5. The Then Deputy Superintendent of
Land Record, Land Record Office,
Near Tahsil Office, Yavatmal,
Tq. and District : Yavatmal.
6. The Then Chief Officer,
Municipal Council, Yavatmal,
Tq. and District : Yavatmal.
7. The Then Sub Registrar (No.1),
Office of Sub Registrar,
Near Administrative Building,
Premises of Collector Office,
Yavatmal, Tq. and District : Yavatmal. **NON-APPLICANTS**

WITH

CRIMINAL APPLICATION (APL) NO.594 OF 2019

Rajesh s/o. Manoharrao Mohite,
Aged about 54 years, Occ. Service,
R/o. Civil Lines, Nagpur,
Tq. & Dist. Nagpur.
(The then Chief Officer, Municipal Council,
Yavatmal) **(Original N. A. No.16).** **APPLICANT.**

----- VERSUS -----

1. The State of Maharashtra, through
Police Station Officer,
Police Station, Avdhutwadi, Yavatmal,
Tq. & Dist. Yavatmal.

2. Ku. Ayushi d/o Kiran Deshmukh,
Aged about 22 years, Occ.: Education,
R/o. Bajoriya Nagar, Yavatmal,
Tq. & Dist. Yavatmal.
(Original Complainant). NON-APPLICANTS

WITH

CRIMINAL APPLICATION (APL) NO.951 OF 2019

Hemant Nathu Rane,
Aged 46 years, Occu. - Deputy Superintendent of
Land Record,
R/o. Chandur Railway, Dist. Amravati. **APPLICANT.**

----- VERSUS -----

1. State of Maharashtra,
Through Police Station, Awdhutwadi,
Dist. Yavatmal.
2. Ayush Kiran Deshmukh,
Aged about 22 years, Occ.: Education,
R/o. Bajoriya Nagar, Awdhutwadi,
Yavatmal. NON-APPLICANTS

In Criminal Application (APL) No.542/2019.

Mr. V. V. Bhangde, Advocate for the Applicants.

Mr. T. A. Mirza, A.P.P for the Non-applicant/State.

Mr. H. D. Dangre, Advocate with Mr. D. G. Patil, Advocate for the Non-applicant No.2.

In Criminal Application (APL) No.543/2019.

Mr. S. V. Sirpurkar, Advocate for the Applicants.

Mr. T. A. Mirza, A.P.P for the Non-applicant/State.

Mr. H.D. Dangre, Advocate with Mr. D. G. Patil, Advocate for the Non-applicant No.2.

In Criminal Application (APL) No.594/2019.

Mr. D. V. Chauhan, Advocate for the Applicant.

Mr. T. A. Mirza, A.P.P for the Non-applicant/State.

Mr. H.D. Dangre, Advocate with Mr. D. G. Patil, Advocate for the Non-applicant No.2.

In Criminal Application (APL) No.951/2019.

Mr. Mir Nagman Ali, Advocate for the Applicant.

Mr. T. A. Mirza, A.P.P for the Non-applicant/State.

Mr. H.D. Dangre, Advocate for the Non-applicant No.2.

**CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.**

DATE : 23.09.2021.

JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Since all these applications arise out of common factual matrix and same First Information Report, we are disposing them by one judgment. **Rule.** Rule made returnable forthwith.

2. By these applications, the applicants in each of the applications are challenging registration of the First Information Report dated 16.05.2019 registered with the non-applicant No.1 – Police Station for the offences punishable under Sections 420, 426, 465, 468, 471, 34 and 120-B of the Indian Penal Code and also the judgment and order dated 14.05.2019 passed by the learned Judicial Magistrate First Class, Yavatmal in Miscellaneous Criminal Application No.124/2019 and judgment and order dated 01.06.2019 passed by the Additional Sessions Judge, Yavatmal in Criminal Revision Application No.35/2019.

3. Since we are treating Criminal Application No.542/2019 as lead application, we are referring parties and pleading as stated in Criminal Application No.542/2019.

4. The facts giving rise to the present applications in nutshell are as under :

The property in dispute is plot No.22, area 16011 sq.ft. situated at Awadhutwadi, Yavatmal, which is owned by the Municipal Council, Yavatmal. The eastern side of the property admeasuring 9241 sq.ft. was leased out to one Gunwantrao Kolhe and western side admeasuring 6770 sq.ft. was leased out to one Anant Vitthal Kolhe. Gunwantrao Kolhe executed two sale-deeds in favour of predecessor in title of the complainant. With the result, predecessor in title of the complainant became owner to the extent of land admeasuring 2309.5 sq.ft. out of plot No.22. Gunwantrao Kolhe expired on 12.02.2002. Father of the complainant Kiran Deshmukh on 18.04.2006 filed Special Civil Suit No.25/2006 against Dilip Anantrao. Kolhe in the Court of Civil Judge, Senior Division, Yavatmal alleging encroachment by Dilip Kolhe on the aforesaid portion of the land admeasuring 2309.5 Sq.ft. The said suit is pending. Kiran Deshmukh (father of the complainant) on 05/6.06.2012 executed registered sale-deed in favour of four persons, who are not parties to the present applications. The names of the said four persons were mutated in revenue record. With the result, father of the complainant had no title from the date of execution of sale-deed.

5. The Municipal Council, Yavatmal on 23.07.2013, executed deed of renewal of lease of portion admeasuring 9241 sq.ft. of land in favour of legal representatives of Gunwantrao Kolhe

(accused Nos.1 to 6) and also the land admeasuring 6770 sq.ft. in favour of legal representatives of Anantrao Kolhe (accused Nos.7 to 12). The said leases are for the period 01.04.1997 to 31.03.2027. The accused Nos.1 to 6 i.e. legal representatives of Gunwantrao Kolhe on 28.02.2014 transferred their lease-hold rights in respect of land admeasuring 9241 sq.ft. in favour of accused Nos.13 and 14. The predecessor in title of the complainant expired on 09.03.2016. The legal representatives of Anantrao Kolhe on 12.05.2016 transferred lease-hold rights in respect of area admeasuring 6770 sq.ft. in favour of accused Nos.13 and 14. Accordingly, names of the accused Nos.13 and 14 were entered in revenue record.

6. The complainant on 25.07.2019, lodged report with the Superintendent of Police, Yavatmal alleging commission of the offences under Sections 420, 426, 465, 468, 471 read with Sections 34 of the Indian Penal Code by the persons named therein. The Superintendent of Police caused investigation and found no substance in the same and therefore, the Sub Divisional Police Officer was informed by letter dated 18.02.2019. The communication of letter dated 18.02.2019 was duly received by the complainant.

7. The complainant thereafter, filed an application on 07.03.2019 under Section 156(3) of the Code of Criminal Procedure

in the Court of the learned Judicial Magistrate First Class, (Court No.4), Yavatmal seeking direction against registration of the First Informant Report against sixteen persons including the applicants in all applications. It is pertinent to note that the complainant did not disclose investigation caused by the Superintendent of Police, Yavatmal and result thereof before the learned Judicial Magistrate First Class, (Court No.4), Yavatmal. The learned Judicial Magistrate First Class, (Court No.4), Yavatmal by order dated 14.05.2019 allowed the application of the complainant and directed the police to register the offences under Sections 420, 426, 465, 468, 471 read with Sections 34 and 120-B of the Indian Penal Code against all the sixteen persons including the present applicants. Accordingly, Police Station, Awadhutwadi, Yavatmal on 16.05.2019 registered the First Information Report No.589/2019. The applicants challenged the order passed by the learned Judicial Magistrate First Class, (Court No.4), Yavatmal before the Sessions Court, Yavatmal by filing Criminal Revision No.35/2019. The learned Additional Sessions Judge, Yavatmal dismissed aforesaid criminal application and therefore, the applicants have filed the present application.

8. This Court issued notice to the non-applicants and the Investigating Agency filed its reply in Criminal Application No.542/2019. The complainant/non-applicant No.2 in Criminal Application No.542/2019 has also filed her reply.

9. The non-applicant No.2 in her reply stated that though father of the non-applicant No.2 had executed sale-deed in favour of four persons in relation to area of 2309 sq.ft., her father has assured delivery of possession to the purchasers and due to the acts of the applicants of encroachment over the said property, and consequent entering of names by the officials, the applicants have committed offences alleged against them.

10. We have heard Advocates appearing for the parties and the learned Additional Public Prosecutor in each of the applications in extenso. We have carefully scrutinized material produced by each of the applications along with the reply filed by the complainant and Investigating Agency.

11. The precise issues which arise for consideration of this Court, based on submissions made across the bar on the controversies involved may be formulated as under :

i] Considering allegations in the First Information Report on the face value and other material produced on record whether essential ingredients of the offences under Sections 420, 426, 465, 468 read with Section 34 and 120-B of the Indian Penal Code by purchasing the property from its owners are fulfilled and whether essential ingredients of the said offences are fulfilled by

entering into the names of purchasers and the Chief Executive officers by executing lease-deed in favour of the purchasers.

ii] Considering allegations in the First Information Report on the face value and other material produced on record whether non-delivery of possession by initially predecessor of the complainant and, thereafter, by the complainant to her purchaser, would be sufficient to constitute offences under Sections 420, 426, 465, 468 read with Sections 34 and 120-B of the Indian Penal Code.

iii] Considering allegations in the First Information Report on the face value and other material produced on record, by mutating the names of the purchasers by registered deed, would be sufficient to constitute offences under Sections 420, 426, 465, 468 read with Sections 34 and 120-B of the Indian Penal Code by the officials of City Survey.

12. The present proceedings concern an F.I.R. registered against the appellant under Section 420. To constitute an offence under Section 420, there should be deception or fraudulent inducement of a person either to deliver a property, but as a consequence of such cheating, the accused should have dishonestly induces the person, deceived one to deliver any property to any person, or to make, alter or

destroy wholly or any part of valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security.

13. It is not the case of the complainant that any of the accused tried to deceive her either by making false or misleading representations or by any other occasion or omission nor it is her case that the accused offered her any fraudulent and dishonest inducement to deliver any property, or to consent to retention thereof by any person, or intentionally induced her to do or omit to do anything, which she would not do or omit if she were not so deceived. The complainant/non-applicant No.2 did not allege that the legal representatives of Anant Kolhe and/or Gunwantrao Kolhe pretended to be the owner of the property, which they in fact were not while executing the deed of transfer of lease-hold rights. It needs to be noted that on and from 05/6.06.2012 when the predecessor in title of the complainant executed sale-deed in relation to the portion of 2309.5 sq.ft. of the land in favour of four persons, who are not parties to the present dispute neither predecessor in title of the complainant nor the complainant had any right, title or interest in relation to either the property transferred in favour of the accused Nos.13 and 14 nor she had any title or right in relation to the property already transferred by her predecessor in title and, therefore, even if, the allegations in the First Information

Report are accepted on their face value, the ingredients of the offence under Section 420 of the Indian Penal Code are not fulfilled in relation to all applicants.

14. The next offences alleged against the applicants are under Section 464 which is punishable under Sections 465 and 468 of the Indian Penal Code. Section 465 prescribes punishment for commission of offence of forgery, which is defined under Section 463 of the Indian Penal Code. Section 463 of the Indian Penal Code reads as under :

“463. Forgery.— [Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

15. The expression making any false document has been defined under Section 464 of the Indian Penal Code, which reads as under :

“464. Making a false document. – [A person is said to make a false document or false electronic record –

First – Who dishonestly or fraudulently –

(a) makes, signs, seals or executes a document or part of a document;

- (b) makes or transmits any electronic record or part of any electronic record;*
- (c) affixes any [electronic signature] on any electronic record;*
- (d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],*

with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly-- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly-- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]”

16. The analysis of Section 464 of the Indian Penal Code shows that a person is said to have made a false documents if,

1. He made or executed a document claiming to be someone else or authorized by someone else or;
2. He altered or tampered with a document or;

3. He obtained a documents by practicing deception or from a person not in control of his senses.

17. Having scrutinized the contents of the documents of transfer of lease rights in favour of the applicants by the accused Nos.1 to 12, it cannot be said that either the accused Nos.1 to 12 or accused Nos.13 and 14 had altered or tampered with the documents nor it can be said that the accused Nos.13 and 14 had obtained documents by practicing deception or from a person not in control of his senses. It is not the case of the complainant that the accused Nos.1 to 12 transferred their lease-hold rights in favour of the accused Nos.13 and 14 by claiming to be someone else or authorized by someone else. It is only when the documents are executed by a person claiming a property, which is not his but he is claiming that he is someone else or he is authorized by someone else, the ingredients of the offence under Section 464 of the Indian Penal Code can be said to have been attracted. If the documents which are executed by the accused Nos.1 to 12 in favour of the accused Nos.13 and 14 are not false documents, then there is no question of commission of forgery and, if there is no forgery then the ingredients of Section 468 of the Indian Penal Code are not fulfilled. It needs to be noted that the purchasers of the property from the predecessor in title of the complainant have not filed any criminal complaint either against predecessor in title of the

complainant or against the complainant or against the accused
Nos.1 to 12.

18. The next offence alleged against the accused persons is punishable under Section 426 of the Indian Penal Code. Section 425 of the Indian Penal Code defines mischief, which reads as under :

“425. Mischief – Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".”

19. On consideration of the ingredients of Section 425 of the Indian Penal Code, it appears that the essential ingredient of the said Section is intent to cause wrongful loss to any person or damage to the public or to any person causing destruction or change in the property which either destroys or diminishes its value or utility, or affects it injuriously can be said to have committed the mischief. In the facts of the present case, the predecessor of the complainant having sold his property by sale-deed dated 05/6.06.2012 in favour of four persons, the predecessor of the complainant or the complainant had no right, title, interest in the said property on or from 05/6.06.2012 and therefore, it cannot be said that the accused persons have committed offence punishable

under Section 426 of the Indian Penal Code as there is neither wrongful loss nor damage to any property or change in relation to any property which either diminishes or injuriously affects such property.

20. On overall consideration of the facts of the present case, we are satisfied that the complainant had filed the said complaint obviously to apply pressure on the accused persons and cause harassment to them. It has been settled by catena of the judgments of the Hon'ble Apex Court that, the criminal proceedings cannot be allowed to be used for settling scores or to cause harassment to the accused persons.

21. We have carefully considered the orders passed by the learned Judicial Magistrate First Class, (Court No.4), Yavatmal dated 14.05.2019 and the order passed by the learned Additional Sessions Judge, Yavatmal dated 01.06.2019. On consideration of the reasons stated in both the orders, we are satisfied that neither the learned Magistrate nor the learned Sessions Judge have applied their mind to the facts of the complaint presented before them. Reading of both the orders make it clear that both the Courts below have failed to apply its mind to the essential facts stated in the First Information Report and therefore, we are satisfied that the learned Magistrate was not justified in directing registration of the First

Information Report against the accused persons nor the learned Sessions Judge was justified in dismissing revision application of the accused person.

22. It needs to be noted that the applicant in Criminal Application (APL) No.951/2019 was the Deputy Superintendent of Land Record from 24.02.2014 to 31.12.2015. During his tenure, the entries of transfer of area admeasuring 858.50 sq.mtr. from accused Nos.1 to 6 in favour of accused Nos.13 and 14 were effected. Neither the learned Magistrate nor the learned Sessions Judge have taken into consideration role of this applicant while passing order of registration of the First Information Report against him.

23. The applicants in Criminal Application (APL) No.543/2019 are the legal representatives of Gunwantrao Kolhe and Anantrao Kole, who had executed transfer of leasehold rights in favour of the accused Nos.13 and 14. It is pertinent to note that the complainant had no right, title and interest in relation to the transfer of leasehold rights by accused Nos.1 to 12 in favour of the accused Nos.13 and 14. In spite of the said fact, the learned Magistrate mechanically directed registration of the First Information Report against all the accused, which is confirmed by the learned Sessions Judge.

24. The applicant in Criminal Application (APL) No.594/2019 was working as Chief Officer of Municipal Council, Yavatmal in the year 2013 who had renewed lease in favour of accused Nos.1 to 12 on 23.07.2013. We failed to understand as to how Chief Officer, Municipal Council, Yavatmal can be made accused for renewing lease in favour of the accused Nos.1 to 12. Neither the learned Magistrate nor the learned Sessions Judge has considered this aspect of the matter and have mechanically passed order under Section 156(3) of the Code of Criminal Procedure for registration of the First Information Report against the Chief Officer, Municipal Council, Yavatmal, which shows complete non-application of mind on their part.

25. On overall consideration of the material on record and, even if, the allegations made in the complaint and the First Information Report are accepted in its entirety, it does not constitute offences under Sections 420, 426, 465, 468, 471 read with Sections 34 and 120-B of the Indian Penal Code.

26. For the reasons stated above, Criminal Application (APL) Nos. 542/2019, 543/2019, 594/2019 and 951/2019 are allowed.

27. The order dated 14.05.2019 passed by the learned Judicial Magistrate First Class, Yavatmal in Miscellaneous Criminal

Application No.124/2019 and order dated 01.06.2019 passed by the learned Additional Sessions Judge, Yavatmal in Criminal Revision Application No.35/2019 and consequent First Information Report No.589/2019 dated 16.05.2019 are quashed and set aside.

28. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE

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