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

CRIMINAL APPLICATION (APL) NO. 775 OF 2014

1. Devidas Vitthalrao Pittalwar,
aged about 70 years

2. Sau.Surekha Devidas Pittalwar,
aged about 68 years

3. Ravindra Devidas Pittalwar,
aged about 40 years

Applicant Nos. 1 to 3 R/o. Baliram
Nagar, Arni, Tq. Arni, Distt. Yavatmal.

4. Sau. Anulina Anilrao Sonewar,
aged about 45 years, R/o. Yavatmal
Rana Pratap Gate, Sheha Nagar,
Yavatmal.

5. ~~Vijayabai Namdeo Pittalwar,~~ (dead)

6. Anilrao Parasram Sonewar,
aged 48 years, R/o. Yavatmal,
Rana Pratap Gate, Sheha Nagar,
Yavatmal.

7. Laxman Narayan Pittalwar,
aged 50 years, R/o. Baliram Nagar,
Arni, Tq. Arni, Distt. Yavatmal.

8. Sau. Aruna Diliprao Pullakwar,
aged about 40 years, R/o. Mul,
Vihirgaon Road, Near Railway
Crossing Mul, Distt. Chandrapur.

9. Ghanshyam Laxman Pittalwar,
aged Major, R/o. Baliram Nagar,
Arni, Tq. Arni, Distt. Yavatmal.

.... **APPLICANTS.**

// **VERSUS** //

1. State of Maharashtra,
   Through its Police Station
   Officer, Police Station, Arni,
   Distt. Yavatmal.

2. Balaji Gopinath Nalamwar,
   aged 68 years, Occ. Agriculturist,

   R/o. Green Park, Arni, Distt. Yavatmal.
   Buldana- 443 002.

.... **NON-APPLICANTS.**

Shri Anil S.Mardikar, Sr.Advocate a/b. Shir R.S.Khemuka, Adv. for Applicants.
Shri S.P. Deshpande, A.P.P. for Non-applicant No.1.
Shri A.K.Tripathi, Advocate for Non-applicant No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.
DATED : FEBRUARY 17, 2021.

ORAL JUDGMENT : (Per : Amit Borkar, J.)

1. Heard.

2. **RULE**. Rule made returnable forthwith.

3. This is an application under Section 482 of the Code of Criminal Procedure challenging registration of First Information Report No.477 of 2014, dated 21st November 2014, registered with non-applicant No.1-Police Station for the offences punishable under Sections 420, 468, 469 and 34 of the Indian Penal Code.

4. The non-applicant No.2 filed a complaint on 21/11/2014 with non-applicant No.1-Police Station with the accusation that the applicants, who are the trustees of Late Vitthalrao Pittalwar Guruji Shikshan Prasarak Mandal, Arni, have delivered possession of the property of the Trust admeasuring 1 acre in favour of one Surekhabai Devidas Pittalwar. It is further alleged that the applicants have shown in the record of the Trust that the Trust received an amount of Rs.38,875/- as a loan and since the Trust was not able to repay the amount of loan, possession of the agricultural land owned by the trust admeasuring 1 acre was delivered to Smt.Surekha Devidas Pittalwar. It is alleged that the applicants have forged documents in relation to the affairs of the Trust from 1994 and have caused monetary loss to the trust.

5. The applicants have therefore, challenged registration of the First Information Report by filing the present application. This Court on 12/12/2014 issued notice to the non-applicants and granted *ad-interim* relief directing the non-applicant No.1-Police Station not to take coercive steps against the applicants. On 9th March 2015 this Court issued Rule and confirmed the interim relief granted on 12/12/2014.

6. In pursuance of the notice, the non-applicant No.1 has filed reply and it is stated that in order to misappropriate the property of the Trust, the applicant No.1 had passed resolution dated 16/04/1990 and

borrowed loan of Rs.38,875/- from Smt.Surekha Pittalwar. It is stated that since the Trust was unable to repay the amount, possession of 1 Acre land was handed over to Smt. Surekha Pittalwar. Accordingly, mutation entry in the revenue record was also effected. It is stated that the Investigating Agency has recorded statements of witnesses which demonstrate the involvement of the applicants in the alleged offence. It is further stated that the applicants have not obtained prior approval or sanction for transfer of the immovable property as contemplated by Section 36 of the Maharashtra Public Trusts Act, 1950 and therefore, the act of transfer is in violation of the provisions of the said Act.

7. The learned Advocate appearing for the non-applicant No.2 submitted that during the pendency of the present application the non-applicant No.2 has expired.

8. We have carefully considered the contents of the First Information Report dated 21/11/2014. The main accusation against the applicants was that they borrowed loan of Rs.38,875/- from Smt.Surekha Pittalwar and for non-payment of the said loan, possession of the property admeasuring 1 Acre, owned by the Trust, was delivered to Smt.Surekha Devidas Pittalwar. We have considered the allegations from the context of the ingredients of the offence under Section 420 of the Indian Penal Code.

9. Let us now examine whether ingredients of an offence of cheating are made out in the FIR. The essential ingredients of the offence of "cheating" are as follows:

> "*(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;*
>
> *(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything, which he would not do or omit, if he were not so deceived; and*
>
> *(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.*"

To constitute an offence under Section 420 of the Indian Penal Code, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived,

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

Two main ingredients of Section 420 of the Indian Penal Code are dishonest and fraudulent intention. The Penal Code has defined the word "dishonestly" in Section 24 of the Indian Penal Code. Section 24 of the Indian Penal Code reads as under:-

> *"**24. 'Dishonestly'**.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'."*

The word "fraudulently" has also been defined in Section 25 of the Indian Penal Code. Section 25 of the Indian Penal Code reads as under:

> *"**25. 'Fraudulently'**.—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."*

10. It will be seen that there are two separate classes of acts, which constitute offence. In the first place, he may be induced fraudulently or dishonestly to deliver the property to any person or to consent that any person shall retain that property. The second class of acts set forth in the Section is the doing or omitting to do anything, which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, inducing must be dishonest or fraudulent. In second class of acts, inducing must be intentional but, not fraudulent or dishonest. Section 420 of the Indian Penal Code applies in cases in which the property is transferred with the requisite act or acts described in Section 415 of the Indian Penal Code.

11. For attracting ingredients of the offence under Section 420 of the Indian Penal Code, it is necessary that the material on record should disclose that a person who is registering offence should be dishonestly

induced to deliver any property to any person. In the facts of the present case, it is undisputed fact that there is no permission obtained by the trustees of the Trust before delivering possession in favour of Smt. Surekha Pittalwar. In absence of valid sanction from the Charity Commissioner, as required under Section 36-A of the Maharashtra Public Trusts Act, 1950, any transaction done by the trustees would be void. Since the alleged transaction of delivery of possession is void, it cannot be said that any loss is caused to the Trust in the context of Section 420 of the Indian Penal Code. If at all there is any monetary loss caused to the Trust, the 'person interested' as defined by Section 2(10) of the Maharashtra Public Trusts Act, 1950 can adopt appropriate remedy as provided under the provisions of the Maharashtra Public Trusts Act, 1950. But, from the allegations and material produced before this Court, we do not find that the ingredients of the offence under Section 420 of the Indian Penal Code are made out.

12. The next Section mentioned in the FIR is Section 468 of the Indian Penal Code, which reads as under:

> *"**468. Forgery for purpose of cheating**.—Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

13. This is the aggravated form of forgery which is punishable under Section 465 of the Indian Penal Code and is defined under Section 464

of the Indian Penal Code. Forgery is defined under Section 463 of the Indian Penal Code, which 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."*

14. Section 464 of the Indian Penal Code speaks of making a false document. The Section reads as under:-

> *"**464. Making a false document.**—A person is said to make a false document or false electronic record—*
> ***Firstly.**—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 **digital** signature or any electronic record;*
> *(d) makes any mark denoting the execution of a document or the authenticity of the **digital** signature, with the intention of causing it to be believed that such document or part of a document, electronic record or digital 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 digital 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 digital 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."*

15. The First Clause suggests that a person makes a false document if he—

(1) dishonestly or fraudulently makes, signs, seals or executes a document, or part of a document, or makes any mark denoting the execution of a document; and

(2) does as above with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed,

  (a) by or by the authority of a person by whom or by whose authority it was not so made, signed, sealed or executed, or

  (b) at a time at which he knows that it was not made, signed, sealed or executed;

16. To attract the Second Clause of Section 464 of the Indian Penal Code there has to be alteration of document dishonestly and fraudulently. So in order to attract Clause "Secondly", if the document is to be altered it has to be for some gain or with such objective on the part of the accused.

An analysis of Section 464 of the Indian Penal Code shows that it divides false documents into three categories:-

(i) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

(ii) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

(iii) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practiced upon him, know the contents of the document or the nature of the alteration.

17. In short, a person is said to have made a "false document", if (i) he has made or executed a document claiming to be someone else or authorized by someone else; or (ii) he has altered or tampered a document; or (iii) he has obtained a document by practicing deception, or from a person not in control of his senses.

18. Insofar as the offences under Sections 468 of the Indian Penal Code are concerned, it is one of the essential ingredients that forgery must be committed for the purposes of cheating. Since the ingredients of the offence punishable under Section 468 of the Indian Penal Code are not fulfilled even

if the allegations in the First Information Report are accepted as correct, we are satisfied that prosecution under Section 468 of the Indian Penal Code cannot be continued against the applicants.

19. Insofar as the ingredients of the offence under Section 469 of the Indian Penal Code is concerned, as stated earlier, the only allegation against the applicants is that they have delivered possession of the property of the Trust in favour of Smt. Surekha Pittalwar and caused loss to the Trust. We find that even if the said accusation is accepted as correct, it will not fulfill the ingredients of the offence under Section 469 of the Indian Penal Code.

20. Since, in this application, we are adjudicating about the issue as to whether the offence with the allegations made in the First Information Report is made out or not, this will not preclude the 'person interested' as defined under Section 2(10) of the Maharashtra Public Trusts Act to adopt appropriate proceedings in relation to subject matter first information report under the provisions of the Maharashtra Public Trusts Act, 1950, if it is otherwise permissible in law.

21. For the reasons stated above, we are satisfied that the ingredients of the offences alleged against the applicants are not fulfilled, the continuation of the proceedings against the applicants would amount to abuse of process of the Court.

22. We, therefore, pass the following order:

First Information Report, dated 21/11/2014, registered with non-applicant No.1-Police Station vide Crime No.477 of 2014 for the offences punishable under Sections 468, 469, 420 and 34 of the Indian Penal Code is quashed and set aside.

Rule is made absolute accordingly.

(AMIT B. BORKAR, J) (Z.A.HAQ, J)

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