

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

CRIMINAL APPLICATION (APL) NO.872 OF 2019

1. Yadav s/o Manikrao Zarbade
Aged about 45 years,
Occupation – Govt. Servant,
R/o. Kothari Nagar, Dhamangaon,
Taluka – Dhamangaon (Rly),
District Amravati
2. Bhagwant s/o Runjaji Bawne
Aged about 54 years,
Occupation – Govt. Servant,
R/o. Green Park, Asiad Colony,
Amravati – 444 604

...APPLICANTS

VERSUS

1. State of Maharashtra through
Police Station Officer through
Police Station Dattapur,
District Amravati (Gramin)
2. State of Maharashtra through
Secretary Home Department,
Mantralaya, Mumbai – 400 032
3. Devidas s/o Madhukarrao Dube,
Aged about – 54 years,
Occupation – Govt. Servant
(Police Constable in Police Station,
Pulgaon, District Wardha)
R/o Pulgaon, District Wardha

...NON-APPLICANTS

Shri N.S. Khubalkar, Advocate for the applicants.
Shri M.K. Pathan, Additional Public Prosecutor for non-applicant
Nos.1 and 2/State.
Shri R.M. Patwardhan, Advocate for non-applicant No.3.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.

DATE : OCTOBER 19, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

ADMIT. Heard finally with the consent of learned Counsel for the parties.

2. By preferring this application, the applicants seeking relief for quashing of First Information Report (hereinafter referred to as the 'FIR' for short) vide Crime No.110/2019 registered at police station Dattapur, District Amravati (Rural) for the offences punishable under Sections 420 and 471 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'the IPC' for short).

3. Applicant No.1 is serving as a Talathi of Saza Kalashi which includes three villages namely Kalashi, Nimbhora (Raj) and Nimbhora (Bodkha) from 2013. Applicant No.2 is functioning as Circle Officer of Bhatkuli circle from 2015. On the relevant time, he was also having Additional charge of Chincholi Circle.

4. On 07/08/2019, non-applicant No.3 – Devidas s/o Madhukarrao Dube lodged FIR against the applicants alleging that both the applicants have taken wrong mutation entry bearing No.558. It is

the contention of the informant that he was shown as dead and with intention to disposed of his property, the name of other persons was taken in his property vide mutation entry No.558 in respect of Survey No.38 situated at Nimbhora (Bodkha) and thereby present applicants have committed an offence punishable under Sections 420 and 471 read with Section 34 of the IPC.

5. In response to the notice, non-applicant Nos.1 and 2 objected the application on the ground that the statements of the witnesses shows that the applicant No.1 being Talathi had wrongly taken entry in the mutation record bearing Survey No.38, therefore, application deserves to be rejected. Non-applicant No.3 – informant had also raised an objection contending that he owns and possesses the agricultural field property bearing Survey No.38 situated at Mouza Nimbhora (Bodkha). The applicants intentionally taken entry with an intention to grab his property and thereby committed an offence.

6. Heard learned Counsel for both the sides. Perused the record.

7. Perusal of the material on record reveals that though, initially a mistake was committed by the applicants by endorsing the mutation entry, it would reveal that both the applicants have immediately rectified

the same by cancelling the earlier entry. It is further to be noted that applicant No.1 who is Talathi had immediately, as soon as it came to his knowledge that the mutation entry was wrongly taken, he corrected the same. The Circle Inspector has no role to play in recording of the earlier entry. Both the applicants expressed their regret for the inconvenience which was caused to non-applicant No.3-complainant. Both the applicants charged with the offences punishable under Sections 416 and 420 of the IPC. Essential ingredients of the offence of cheating are deception, which is absent in the present case. Thus, the ingredients of the offences are not made out against the present applicants.

8. Taking into consideration the nature of allegations, we do not find that a case is made out for proceeding against the present applicants for the offences they are charged with.

9. Learned Counsel for the applicants relied upon ***Sharad s/o Laxmanrao Nandurkar Vs. State of Maharashtra and anr. 2014 ALL MR (Cri) 1738***, wherein in the similar situated facts and circumstances, the Division Bench of this Court has quashed the FIR. In the present case also, perusal of the contents of FIR would show that even taking the allegations in the FIR at its face value, no case is made out for the offences punishable under Sections 420 and 471 read with Section 34 of the IPC against the present applicants.

10. In view of the above, we are inclined to allow the application, therefore, the application is allowed.

11. In the result, we proceed to pass the following order :

(i) The criminal application is allowed.

(ii) The First Information Report registered against the present applicants vide Crime No.110/2019 registered at police station Dattapur, District Amravati (Rural) for the offences punishable under Sections 420 and 471 read with Section 34 of the Indian Penal Code is quashed and set aside

12. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Divya*