



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

29 CRIMINAL APPLICATION NO. 141 OF 2024

Bhimrao Rajdhar Nannaware,
Age : 62 yrs, Occ; Agril,
R/o; Rawanje (Bk.),
Tq. Erandol, Dist. Jalgaon.

...APPLICANT
(Accused No. 3)

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Police Station Erandol,
Tq.: Erandol, District : Jalgaon,

2. Hinduja Housing Finance Ltd.,
Through its Manager,
Chandrakant Devidas Koli,
Age : 36 yrs, Occ; Service,
Address : Shop No. 4,
Ground Floor, Vitthal Shopping
Complex, 119, Jai Nagar,
Zilla Peth, Jalgaon,
Tq. and District : Jalgaon.

...RESPONDENTS
(Original Complainant)

.....
Advocate for Applicant : Mr. Ishwar K. Wagh h/f Mr. More Kumar
Gaurav M.

APP for Respondent No. 1 State : Mr. G.A.Kulkarni
.....

CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.

DATE : 04.07.2025

PER COURT :

1. The present application has been filed for quashing the proceeding bearing RCC No. 17 of 2023, pending before the learned J.M.F.C., Erandol, District Jalgaon arising out of the FIR vide Crime

No. 224 of 2022, registered with Erandol Police Station, District Jalgaon on 28.11.2022 for the offence punishable under Sections 415, 417, 418, 420, 422, 425, 323, 324, read with 34 of the Indian Penal Code.

2. The present applicant is the original accused No. 3.

3. Heard learned Advocate Mr. Wagh h/f Mr. More, learned Advocate for applicant and learned APP for the respondent No. 1.

4. In order to cut short it can be stated that learned Advocate for the applicant as well as learned APP for respondent No. 1 argued in support of their respective contentions after taking us through the entire charge-sheet.

5. Respondent No. 2 remained absent inspite of valid service of notice.

6. FIR has been lodged by the informant in his official capacity as a Manager of the Hinduja Housing Finance Limited, Jalgaon Branch. The original accused Nos. 1 & 2 had taken home loan from Aspire Home Finance Limited to the extent of Rs. 8,26,202/- and later on from Motilal Oswal Home Finance Ltd., Jalgaon on 29.04.2017 and then additional loan was demanded to the extent of Rs. 10,34,000/-. They had mortgaged their house bearing No. 82 situated at village Khanje (Bk.), Tq. Erandol to the

said Hinduja Housing Finance Limited, Jalgaon and the Aspire Housing Finance Ltd. Company. It is the contention of the informant that for the enhanced amount of loan, original accused Nos. 1 & 2 ought to have executed mortgage deed but it was not so mortgaged.

7. Accused Nos. 1 & 2 had entered into an agreement to sale by registered deed, dated 13.12.2021 and thereby all three accused persons have cheated and caused financial loss to Hinduja Housing Finance Company Ltd. It is then stated that when the informant had gone to accused Nos. 1 & 2 to demand the amount of repayment on 28.12.2021, around 2.00 p.m., at that time he was assaulted.

8. We are constrained to look at the involvement or role allegedly to have been played by the present applicant only in this matter. It is stated that, in his vehicle accused Nos. 1 & 2 have executed agreement to sale. Taking this as it is, it is only an agreement to sale which may not create any kind of right even in favour of that person, in whose favour the document has been executed. His right would be only to the extent of getting sale deed executed or if he treats that there is breach of terms of agreement, then in order to get damages he can use such document. When no right has been created in favour of present applicant by virtue of said agreement, we are of the opinion that, it would not have a cause for any financial loss or cannot amount to a cheating, because there was

no transaction between the present applicant and the informant or his company. As regards, assault and abuses are concerned, those acts were not attributed to the present applicant in the entire charge-sheet and there is no evidence to show that said agreement to sale was with an intention to dupe the company. In other words, there is no evidence which would show that there was common intention between the present applicant and the accused persons.

9. First Information Report appears to have been registered in view of the order passed by the learned J.M.F.C. Erandol, under Section 156 (3) of the Code of Criminal Procedure. In the First information Report /Complaint before the Magistrate, the informant has stated that accused Nos. 1 & 2 had agreed to get the encumbrance clear on the property which was mortgaged and then to execute fresh mortgage deed in favour of Hinduja Housing Finance Company Ltd. It shows that Hinduja Housing Finance Company had knowledge that the said property was mortgaged to Aspire Home Finance Company and later on it become the Motilal Oswal Home Finance Ltd., Jalgaon.

10. Unless all documents are put in order that the Hinduja Housing Finance Company Ltd., ought not to have disbursed any part of loan amount that was allegedly sanctioned, but they had taken decision to give part of loan without execution of the mortgage deed, but with a hope that such document would be executed later

on, then informant's Company itself had run on the risk, therefore, question of offence under Section 415, 417, 418, 420, 422, 425, 323, 324, 468 and 471, 472 read with 34 of Indian Penal Code cannot be said to have been attracted as against the present applicant.

11. In view of above position of facts and law, it would be an abuse of process of law, if the applicant is asked to face the trial. This is a fit case, we should exercise our powers under Section 482 of Code of Criminal Procedure. Hence following order :

ORDER

- (i) The application stands allowed.
- (ii) The proceedings in R.C.C. No.17 of 2023 pending on the file of Judicial Magistrate, First Class, Erandol, District Jalgaon arising out of the First Information Report vide Crime No. 224 of 2022 registered with Erandol Police Station, District Jalgaon on 28.11.2022 for the offence punishable under Sections 415, 417, 418, 420, 422, 425, 323, 324, 468 and 471, 472 read with 34 of Indian Penal Code, stands quashed and set aside against applicant Bhimrao Rajdhar Nannaware.
- (iii) The Criminal Application is disposed of.

(SANJAY A. DESHMUKH)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE