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

CRIMINAL WRIT PETITION NO.98 OF 2006

Shirishkumar s/o Jaywantrao Bhamre,
Age: 53 years, Occu: Advocate,
R/o 46, Sanjay Housing Society,
Aurangabad

....PETITIONER

VERSUS

1. The State of Maharashtra
2. Vinayak s/o Waru Sawant,
Age: 60 years, Occu: Pensioner,
R/o. Plot No.24, Shubham Nagar,
Walwadi, Wadi Bhokar Road,
Dhule
Since died, through L.R.
2-A Swati w/o Dnyaneshwar Patil,
Age: 48 years, Occu: Housewife,
R/o : Ruchita Apartment, Jalgaon

....RESPONDENT

....

Mr Sanket N. Suryawanshi, Advocate for Petitioner
Ms Uma S. Bhosale, APP for Respondent No.1/State
Mr Krishna P. Rodge, Advocate for Respondent No.2-A

....

CORAM : SUSHIL M. GHODESWAR, J.

RESERVED ON : 03 DECEMBER 2025

PRONOUNCED ON : 22 DECEMBER 2025

JUDGMENT :-

1. By this petition, the petitioner prays for quashing of the proceedings bearing R.C.C. No.472/2004, pending on the file of the

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learned Chief Judicial Magistrate, Dhule, Dist. Dhule to his extent (original accused No.4).

2. According to the petitioner, he is practicing Advocate at Aurangabad and Dhule since 1979. In the month of July 2003, one of his relatives by name Manindra Bhalchandra Sawant, who is the son of brother of respondent No.2/complainant, approached the petitioner at Aurangabad and requested him to prepare a draft of power of attorney of his uncle Vinayak Waru Sawant in his favour for the purpose of giving statement and doing needful before the revenue authorities as to implement partition between his uncles, namely Rajendra and Vinayak and his father Bhalchandra. Accordingly, upon that instructions, the petitioner prepared rough draft of power of attorney in his own handwriting and handed over it to Manindra and further advised him to execute the same before the Sub-Registrar, Dhule or notary in presence of Vinayak Waru. The said power of attorney came to be typed and notarized at Dhule by said Manindra before one Advocate A. B. Wagh. However, instead of Vinayak Waru, some other person was present at the time of execution of the said power of attorney. Therefore, on 07/01/2004, respondent No.2/Vinayak Waru Sawant filed complaint against four persons, namely, Manindra Bhalchandra Sawant, Bhalchandra Waru Sawant, Sanjay Ramdas Bhadane and

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present petitioner. It is alleged in the complaint that the petitioner was not present while execution of said documents, however, he is involved in executing the said illegal document. On the basis of said complaint, FIR bearing C.R. No.10/2004 came to be registered for the offence punishable under Section 420 and 468 read with section 34 of the Indian Penal Code against the accused persons including petitioner. After completion of investigation, charge sheet came to be filed by the Police on 15/06/2004. The case came to be registered as R.C.C. No.472/2004 before the learned Chief Judicial Magistrate, Dhule.

3. On 01/10/2004, the petitioner filed an application for discharge under Section 239 of the Code of Criminal Procedure before the learned Chief Judicial Magistrate, Dhule. On 21/02/2005, learned Trial Court, vide its impugned order, rejected the discharge application of the petitioner, and therefore, the petitioner has approached this Court by filing this petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for quashing the proceedings bearing R.C.C. No.472/2004 filed against him.

4. Heard learned Advocate Mr Suryawanshi for petitioner, learned APP Ms Bhosale for respondent No.1/State and Advocate Mr Rodge for respondent No.2-A.

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5. Learned Advocate for the petitioner submits that, as there is no material against the petitioner, the prosecution against him is nothing but abuse of process of law and therefore, the petitioner has approached this Court for quashing and setting aside the proceedings initiated against him. He then vehemently submits that the petitioner was not present when the disputed documents came to be executed and his signature was not found on the said disputed documents. He then submits that the notary Advocate, namely, Ashok Budhaji Wagh, resident of Dhule had notarized the said disputed documents in his own handwriting he had endorsed the petitioner's name in his own handwriting. It was duty of said Advocate Wagh to ascertain identification and verification of identity of the persons who were executed the said documents. According to learned Advocate for the petitioner, said Advocate Wagh who was public notary had failed to discharge his duty, and therefore, he tried to shift blame on petitioner. Therefore, he submits that, merely mentioning name of petitioner in the complaint and the statement of notary Advocate that the petitioner had called him and identified the said executors of the documents, is therefore, devoid of any substance. He further submits that, except name of the petitioner appearing on the notarized documents by way of handwriting of the said public notary Advocate Ashok Wagh, there is

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no other incriminating material against him to prosecute him for the offence registered against him. He further submits that allegation in the FIR and in the entire charge sheet, even if taken as it is, they do not constitute any case against petitioner for offence punishable under Sections 420, 468 read with Section 34 of the Indian Penal Code. Therefore, he prays for quashing and setting aside the impugned proceedings bearing R.C.C. No.472/2004 and the petitioner may discharge from the said case.

6. Per contra, learned APP Ms Bhosale submits that there is strong material against the petitioner for committing this crime and in the complaint there is specific averment of involvement of the petitioner in the said crime. She, therefore, prays for rejection of the present petition.

7. Learned Advocate Mr Rodge for Respondent No.2 submits that there is enough material available in the complaint as well as on record to suggest that the petitioner is prima facie involved in the commission of crime. He further submits that the order passed by the learned Judicial Magistrate on 21/02/2005 below Exhibit 10 in R.C.C. No.472/2004 is correct and proper and requires no interference by this Court. He further submits that, at the time of framing of charge

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against accused or considering discharge application, the Court is not supposed to conduct mini trial and is required to proceed with the assumption that material brought on record by the prosecution are true and further that by way of probative value of the materials has to be gone into to see that if there is prima facie case against the accused persons. In short, the Court is not expected to go deep into the matter and hold that the materials before it would not warrant conviction and if Court thinks that accused prima facie has committed the offence, it can proceed to frame charge accordingly. In support of his submissions, he relies on following two judgments :-

(I) State of Tamil Nadu Vs. N. Suresh Rajan and others, (2014) 11 Supreme Court Cases 709; and

(II) M. E. Shivalingamurthy Vs. Central Bureau of Investigation, Bengaluru, (2020) 2 Supreme Court Cases 768.

8. After hearing the learned Advocates for the respective parties and going through the impugned order as well as record of the instant matter available with the Court, it is revealed that the petitioner is a practicing Advocate since 1979. The relative of the petitioner namely, Manindra Bhalchandra Sawant approached him and requested

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him to prepare a draft of power of attorney of complainant/Vinayak Sawant, who is uncle of Manindra, in his favour. Upon the said instructions, the petitioner had prepared a rough hand draft and handed it over to Manindra. Petitioner also advised Manindra to execute it before the Sub-Registrar or before the Notary in presence of Vinayak Sawant. As per the record, said Manindra purchased bond paper of Rs.100/- from Aurangabad, got it typed on 14/07/2003, notarized it through Advocate A. B. Wagh from Dhule. On the basis of said power of attorney, Manindra got revenue extract recording his name before the Talathi vide entry dated 14/01/2024. On 07/01/2004, complainant Vinayak Waru Sawant filed complaint against four persons, namely, Manindra, Bhalchandra, Sanjay and present petitioner Shirish Kumar Bhamare. It is specifically mentioned in the complaint that the petitioner was not present while execution of said documents. The notary Advocate Wagh, however, in his statement stated that he agreed to notarized the document pursuance of a chit and phone call from the petitioner. However, there is no record as regards said chit or phone call alleged to be made by the petitioner. It is also established that accused No.1 had recorded the revenue entry on the basis of fraudulent power of attorney and same was immediately rectified by the complainant on 14/01/2004. It is also equally important to note that

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the stamp paper vendor, in his statement, clearly stated that, only accused No.1 /Manindra purchased stamp paper from him on 07/07/2003 and there is entry and signature to that effect in his register. He nowhere stated in his statement that the petitioner had at any point of time approached him in relation to said work of the accused persons. Likewise, the statement of Talathi also discloses that it was accused No.1/ Manindra approached him and got entry in revenue record. His statement also does not even mentions name of petitioner.

9. With the aforesaid quality of evidence, it is important to note that the intention of the petitioner/Advocate as regards committing crime in collusion with the other accused persons is missing. The petitioner who is practicing Advocate, upon being approached by his relative, is supposed to render him as much as possible legal advise and assistant. Role of the petitioner at the most could be limited upto preparing the draft of power of attorney. However, through the investigation papers, it is difficult to ascertain that the petitioner, thereafter had obtained the stamp paper, got typed the power of attorney on the said typed paper and also went to the notary and got the said document notarized and further he was benefited by the execution of such documents in illegal manner. There

is also no material to suggest that the petitioner was actively involved in the instant crime. One thing it is required to be noted that the witness Ashok Budhaji Wagh, Notary Advocate was supposed to execute the document as per provisions of Notary Act. He was required to take care about identification of the executants of the original documents and was also required to make entry of notarial act of certifying copy of documents as true copy of documents. Advocate Wagh in his statement has stated that the petitioner had given one chit and in the said chit it was informed to him that certain relatives would approach him and it was asked him to notarize the said document brought by said relatives. In short, according to said witness Advocate Wagh, it was the petitioner who has written a chit requesting him to notarize the document brought by the person, who stated to be relatives of the petitioner. On the basis of such instructions appearing on the said chit, Advocate Wagh, despite being Notary Advocate, has executed the document in contravention to the provisions of Notary Act. Moreover, in his statement, he tried to shift the burden of his wrong on the petitioner. Therefore, it is clear that the petitioner, by no stretch of imagination can be said to have committed offence registered against him. In that view of the matter, **this petition is allowed.** The proceedings bearing R.C.C. No.472/2004, pending on

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the file of the learned Chief Judicial Magistrate, Dhule is quashed and set aside to the extent of present petitioner.

10. Rule is made absolute in above terms.

[SUSHIL M. GHODESWAR, J.]

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