IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2215 OF 2022

1) Anil Champalal Kochar,
Age-52 years, Occu:Service,
R/o-Near Bus Stand,
At Post-Taloda, Taluka-Taloda,
District-Nandurbar,

2) Champalal Manakchand Kochar,
Age-85 years, Occu:Retired,
R/o-Near Bus Stand,
At Post-Taloda, Taluka-Taloda,
District-Nandurbar.

...APPLICANT

VERSUS

1) The State of Maharashtra,

2) Adv. Nurmohammad Sattar Shaikh,
Age-58 years, Occu:Advocate,
R/o-Badri Colony, Taluka-Taloda,
District-Nandurbar.

...RESPONDENTS

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Mr. Amit S. Savale Advocate for Applicants.
Ms. P.R. Bharaswadkar, A.P.P. for Respondent No.1 – State.
Mr. Sushil P. Pandit Advocate and Mr. A.R. Syed Advocate for Respondent No.2.

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

DATE : 8th JULY, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed, initially for for quashing the First Information Report (for short "the FIR") vide Crime No. 29 of 2022 registered with Taloda Police Station, District-Nandurbar, on 30th January 2022, for the offence punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code and later on by way of amendment for quashing Charge-sheet No.5 of 2023 i.e. proceedings in Regular Criminal Case No.57 of 2023, pending before the learned Judicial Magistrate First Class, Taloda, District-Nandurbar.

2. Heard learned Advocate Mr. Savale appearing for the applicants, learned APP Ms. Bharaswadkar for respondent No.1 and learned Advocates Mr. Pandit and Mr. Syed for respondent No.2.

3. Learned Advocate appearing for the applicants has stated that the applicants are the son and father and applicant No.1 was the Bank Manager of Shahada Peoples Co-operative Bank Limited, Taloda Branch on the date of the FIR. Respondent No.2 is the practicing Advocate and therefore, he is supposed to know the requirements in law. When a person who is an Advocate,

decides to purchase an immovable property, he is supposed to know what is the document of title and who can sell the property or in other words, he should know that who is the owner of the property who has power to sell the property. The informant has come with the case that he has sold his plot from Nandurbar in 2010 and had received consideration and out of the said consideration he wanted to invest amount of Rs.15,00,000/-. He, therefore, told the said fact to applicant No.1. Informant says that he knows applicant No.1 since last 15 to 16 years prior to the FIR. The informant states that he was the legal advisor/Advocate appointed by Shahada Peoples Co-operative Bank and had represented in the case which was filed against the Bank. When informant disclosed that he wanted to invest the amount, applicant No.1 told that amount of Rs.7,50,000/- can be invested in one plot in M.I.D.C. (Maharashtra Industrial Decvelopment Corporation), Nardana and accordingly, he states that two plots were booked, out of which one was for the informant and another was for his brother Khalil. For that purpose, they handed over the cash of Rs.15,00,000/- to the applicants by visiting the house of applicants in December 2010. It was then told by applicant No.1 that along with him, Mahavir Jain, Vijay Jadhav, Dilip Tarachand Jain, Navneet Vitthal Shinde, Tayyab Marchant had also booked the plots. All those persons were taken by applicant No.1 on 13th June 2013, to the Sub-Registrar's Office at Sindkheda. It was told that plot No.E-7 from M.I.D.C., Nardana is the plot in the name of the informant and in a hurried manner the sale deeds were registered. No file containing sale deed was given to him. He then states that in April 2018, he received notice from M.I.D.C. Office stating that as within the stipulated period he has not started the business activities in the plot allotted to him in the M.I.D.C., Nardana, the agreement stands cancelled. Thereafter the informant and his brother went to the applicants and asked them that when they have purchased the plot, how the notice in respect of rent agreement had received. At that time the applicants told them that they would look into the matter and the informant should not worry. The informant states that he raised suspicion and therefore, he asked for the file of the plots and then he realized that though the applicants had taken amount of Rs.7,50,000/- for each plot in cash, for one plot they had deposited amount of Rs.1,44,400/- only. In May, 2019, informant's brother received cheque for Rs.48,312/- from M.I.D.C., Dhule office and in December, 2019, the informant received cheque of Rs.40,275/-. The informant then realized that he has been cheated. Though amount of Rs.15,00,000/- was received, only amount of Rs.2,88,880/- was invested and rest of the amount has been misappropriated by the applicants.

4. Learned Advocate for the applicants has submitted that the plots from M.I.D.C. area are not for sell and this should be known to an Advocate. He has not made any inquiry and it is not believable that he would have blindly relied on whatever was allegedly done by the present applicants. It is also unbelievable that since 2013 to 2018, informant would not have even visited the plot, seen where exactly it is situated and he would not have tried to collect the documents in respect of the plot. Though it can be accepted that relations between the applicants and the informant were good, that does not mean that informant would have blindly relied upon whatever stated to him. Further, in order to prove the offence of cheating, there should be intention to cheat since beginning and for offence under Section 406 of the Indian Penal Code, the amount would have been handed over / entrusted with trust and therefore, these two ingredients cannot go together. With this prosecution story and clear documents of rent agreement entered into before the Sub-

Registrar by the informant and his brother, it would be unjust to ask the applicants to face the trial.

5. Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the application and submitted that applicant No.1 has taken disadvantage of the faith of the informant in him. When it was disclosed by the informant that he wants to invest the amount, then by taking initiation, applicant No.1 has carried out all those activities. When it was realized by the co-investors that the applicants had cheated them, they have taken different recourse. But still the assurance was given by the applicants in 2018, that they will look into the matter. But in 2019, the M.I.D.C. gave two different cheques to the informant and his brother. That means, even after 2018, the applicants have not done anything. It shows that there was intention to cheat the informant and his brother since beginning. Amount of Rs.15,00,000/- was given and even we accept the agreements as it is, yet for that purpose only amount of Rs.2,88,880/- has been spent. For rest of the amount certainly there is misappropriation. Now the charge-sheet is filed. There are statements of the witnesses also and therefore, let there be a trial.

6. At the outset, we agree to the proposition of law put forward on behalf of the applicants that the offences under Section 420 and 406 of the Indian Penal Code would generally not go together. For proving offence under Section 420 of the Indian Penal Code, it has to be shown that there was an intention to cheat since beginning i.e. *ab initio*. However, for proving offence under Section 406 of the Indian Penal Code, there has to be entrustment to a person. That means, the person giving the amount or article is supposed to have the trust in the person to whom it is given. Words 'trust' and 'cheat/cheating' will not go together. However, there may be certain instances when there may not be intention to cheat since beginning but it may develop at a later stage, which will have to be then specifically averred in the FIR or the complaint. In other words, when the initial trust changed into intention to cheat at a later point of time, that should be specifically pleaded. Herein this case there was no subsequent transaction.

7. The contents of the FIR are already stated and therefore, we would like to avoid the repetition, but suffice it to say that as per the say of the informant, he gave amount of Rs.15,00,000/-

in cash to the applicants in December 2010. However, even at that time also, he says that applicant No.1 had made the statement that two plots from M.I.D.C. were booked in December 2010. We cannot ignore the fact that the informant is a practicing Advocate and therefore, he is supposed to know the procedures. M.I.D.C. is a Maharashtra Government Undertaking and it is a Corporation. The booking of the plots in the M.I.D.C. cannot be without a document. Informant does not say that any document was entered into in December 2010. Further, when it was the transaction for booking of plots, there could not have been the transaction in cash, as the plots were belonging to a Corporation. The documents in respect of the informant and his brother Khalil are on record and in the said document it is stated that the amount of Rs.1,44,400/- would be the premium amount. The other amounts have also been quoted and for which receipts have been given. Even Shirpur Peoples Co-operative Bank appears to have been involved in the matter. Further on behalf of the M.I.D.C., the said document has been signed by its Area Manager, S.N. Bhor. It is hard to believe that there would not have been talks between the said Area Manager of the M.I.D.C. and the informant, who is a practicing Advocate, on the date of registration of the document.

8. The informant has not stated as to whether he had made an inquiry with applicant No.1 since December 2010 till 13th June 2013, as to what applicant No.1 had done with the amount of Rs.15,00,000/-. It is then stated by the informant that at the Sub-Registrar's Office everything was done hurriedly. For a legally educated person, this cannot be the defence at all. The signatures are required to be made in presence of the Sub-Registrar and the fact that when it is a registered instrument, there is a presumption that Sub-Registrar would have asked the party executing the document regarding nature of the document. Even at that time also the informant would have realized, as to what was the nature of the document he was to enter into on that day. With all these safeguards, it is hard to believe that the informant and his brother had not realized that the nature of the document they had executed on 13th June 2013, was different.

9. The informant has also not stated, as to why he had not tried to get copy of the document which was executed by him on 13th June 2013, either from the applicants or by making an application for certified copy from the Sub-Registrar's Office prior to April 2018. Again we would like to say that it is hard to

believe that for five years the informant will not do anything in respect of the said immovable property, if according to him he had purchased the same. Informant then states that for the first time he realized about the nature of the document when he received notice from M.I.D.C. Office in April, 2018. Neither informant himself nor his brother had tried to contact the M.I.D.C. officers even till the date of the FIR i.e. 30th January 2022. There is no averment to that effect. Informant says that he and his brother went to the applicants and they again told that they would look into the matter. He then says that the file was seen by him in respect of the transaction. Now, who had made him available the said file, has not been clearly stated. If it was with applicant No.1 then again the question will arise, as to why for all those five years he had not even asked applicant No.1 to at least show him the file. The story appears to be unbelievable and improbable and the FIR appears to be now lodged with *mala fide* intention and therefore, the case is covered under the Guideline Nos. (5) and (7) laid down in ***State of Haryana and others vs. Bhajan Lal and others, 1992 Supp (1) SCC 335***, Therefore, this is a fit case for exercise of powers under Section 482 of the Code of Criminal Procedure. Hence, we pass following order:-

ORDER

(I) The Application stands allowed.

(II) The Charge-sheet No.5 of 2023 i.e. proceedings in Regular Criminal Case No.57 of 2023, pending before the learned Judicial Magistrate First Class, Taloda, District-Nandurbar, arising out of the First Information Report vide Crime No. 29 of 2022 registered with Taloda Police Station, District-Nandurbar, on 30th January 2022, for the offence punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code, stands quashed and set aside as against applicant No. 1 - Anil Champalal Kochar and applicant No.2 - Champalal Manakchand Kochar.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JULY25