



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

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 15 OF 2023

Pahelraj s/o Chandumal Shambhani
Age : 72 years, Occu.: Business,
R/o. Nanak Nagar, Sindhi Colony,
Bhusawal, District Jalgaon.

....Applicant
(Orig. Complainant)

Versus

- 1] The State of Maharashtra
- 2] Shyam s/o Chandumal Shambhani
Age : 68 years, Occu.: Business,
R/o. Nanak Nagar, Sindhi Colony,
Bhusawal, District Jalgaon.

....Respondents
(Respondent no.2/
Original accused)

.....
Advocate for Appellant : Mr.Dattatray K. Kulkarni
APP for Respondent no.1 : Mr.S.A.Gaikwad
Advocate for Respondent no.2 : Adv. Aummaheshwari S. Jadhav

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CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 02 DECEMBER, 2025
PRONOUNCED ON : 12 DECEMBER, 2025**

ORDER :

1. Instant leave application is at the instance of applicant, who was original complainant and who had filed a private complaint alleging commission of offence under Sections 420, 465, 468 of the Indian Penal Code (IPC) and the same stood dismissed.

2. The substance of complaint was that, applicant was owner of house property bearing Municipal House no.6130 admeasuring 90.77 sq.mt. That, complainant had permitted his brother (present respondent no.2) to occupy the premises on tenancy basis. That, after initially paying rent for two months, rent was not paid and therefore, complainant was constrained to file proceedings bearing RCS No.138 of 2002 and even succeeded in the same. The said decision is confirmed by the District Judge in Civil Appeal No.270 of 2014. That, against said decision, his brother Sham preferred Criminal Revision Application No.38 of 2020 before this Court and is succeeded in same and it is the case of applicant that against the said decision applicant has filed review application before this Court and the same is pending.

3. It is allegation of complainant that, accused, his brother, by committing forgery of his signature on a fabricated stamp paper, showed that there was partition of the above house property and he had got share bearing no.930/1. According to complainant, there was no partition at all, but on the basis of fabricated document like consent letter (exhibit 20), property has been tried to be usurped.

Therefore, with above allegations, a private complaint has been

filed praying for action against respondent no.2 for offence under Sections 420, 465 and 468 of the IPC.

4. In the above private complaint, learned trial Court recorded pre-charge evidence of complainant alongwith evidence of his witness Chandrakant Patil, a official of Municipal Council, Bhusawal. Said Patil has placed on record the documents viz. copy of application for change of record (exhibit 19); copy of consent letter (exhibit 20); property tax demand notices (exhibit 21 to 25) for the year from 2001 to 2003. On appreciating the oral and documentary evidence, learned Judicial Magistrate First Class (Court No.1), Bhusawal, was pleased to acquit the accused by judgment and order dated 04-11-2019.

It is the above order, which is now sought to be challenged and for doing so, instant leave application has been filed.

5. Learned counsel for applicant would submit that applicant and respondent no.2 are brothers. That, applicant is the owner of Municipal House property bearing no.930 and it was let out on rent to his own brother, but subsequently there was irregularity in payment of rent and therefore, recovery proceedings has been

instituted. It is pointed out that in said proceedings, respondent no.2 had put up a case that he is also owner of the property. That, therefore, under the Right to Information Act, documents were sought and on studying the same, according to learned counsel, it was revealed that fraud has been played on him by committing forgery. That, consent letter was also manufactured and therefore, offence of 420, 465 and 468 of IPC was clearly made out, but according to him, learned trial court failed to appreciate the same and acquitted the accused and hence, learned counsel urges for leave on the ground that there is improper appreciation and failure to appreciate oral and documentary evidence and hence leave is urged for.

6. Learned counsel for respondent no.2 has justified the order of learned trial Court and urges to refuse leave.

7. In the light of above submissions, papers placed before this court are perused. It seems that parties are brothers. Present applicant claims to be owner of house property no.930 and it is his case that he had permitted his brother respondent no.2 to occupy it on rent, but as there was default in rent, recovery proceedings were

instituted. It is pointed out that in such proceedings, respondent no.2 appeared and denied very ownership of property of applicant. It is further submitted that under Right to Information Act, when papers were obtained from Municipal Council, it was revealed that on the strength of fabricated consent letter and by committing forgery of signature, partition is shown to be effected.

8. In support of above case, complainant adduced his evidence and also adduced evidence of one Chandrakant Patil, who was Clerk of Municipal Council, Bhusawal and said witness has placed on record documents exhibits 19, 20, 21, 22, 23, 24 and 25. Exh.20 seems to be consent letter under the signature of applicant consenting transfer of the house property in the name of Sham (respondent no.2) and accordingly, on the strength of the same, Municipal Council has taken it on record and made necessary entries. Though complainant denied issuing or executing document at exhibit 20, witness no.2 has stated before the Court about complainant issuing it vide exhibits 19 and 20 under his signature.

9. It seems that there is no distinct evidence from applicant that there was fraud played on him or by forgery documents were

fabricated and put to use. No prayers were made for referring the mater to hand-writing expert.

10. Learned trial Court has noted that, primarily issue was between landlord and tenant and as such dispute was civil in nature. As ingredients of none of the offences allegedly committed were made out, learned trial Judge, acquitted the accused.

11. On perusal of the impugned Judgment and order, this court does not find any infirmity in the same so as to accord leave to challenge the same. Hence, the following order :

ORDER

- (i) Leave is refused.
- (ii) Application for Leave to Appeal is rejected.

**(ABHAY S. WAGHWASE)
JUDGE**