



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4309 OF 2022

Harish Kishanchand Mandhwani,
Age 54 yrs., Occ. Business,
R/o 104/3, Sindhi Colony,
Jalgaon.

At present r/o C/o Kishanchand Mandhwani,
D-301 at Classic, Vidhan Sabha Main Road,
Shankar Nagar, Raipur,
Chhattisgarh – 492004.

... Applicant

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
Jilha Peth Police Station,
Jalgaon.
- 2 Ashok Namdeo Rane,
Age 63 yrs., Occ. Business,
R/o 19, Bhoite Nagar,
Near Pimprala Gate,
Near Chhota Ganpati Temple,
Jalgaon, Tq. & Dist. Jalgaon.

... Respondents

...

Mr. M.G. Patil, Advocate for applicant

Mr. G.A. Kulkarni, APP for respondent No.1

Mr. A.S. Sawant, Advocate for respondent No.2

...

WITH

CRIMINAL APPLICATION NO.4087 OF 2022

Gurumukh Mehrumal Jagwani,
Age 65 yrs., Occ. Business,
R/o 20-B, Jainagar, Jalgaon.

... **Applicant**

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
Jalgaon Taluka Police Station,
Jalgaon.
- 2 Ashok Namdeo Rane,
Age 63 yrs., Occ. Business,
R/o 19, Bhoite Nagar,
Near Pimprala Gate,
Near Chhota Ganpati Temple,
Jalgaon, Tq. & Dist. Jalgaon.

... **Respondents**

...

Mr. A.N. Nagargoje, Advocate for applicant
Mr. G.A. Kulkarni, APP for respondent No.1
Mr. A.S. Sawant, Advocate for respondent No.2

...

WITH

CRIMINAL APPLICATION NO.4263 OF 2023

H.A. Lokchandani @ Haresh Ashok Lokchandani,
Age 42 yrs., Occ. Chartered Accountant,
R/o 23-A, Khandesh Mill Colony,

Ring Road, Jalgaon, Dist. Jalgaon.

... **Applicant**

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
Jalgaon Taluka Police Station,
Jalgaon.
- 2 Ashok Namdeo Rane,
Age 63 yrs., Occ. Business,
R/o 19, Bhoite Nagar,
Near Pimprala Gate,
Near Chhota Ganpati Temple,
Jalgaon, Tq. & Dist. Jalgaon.

... **Respondents**

...

Mr. V.B. Patil, Advocate for applicant

Mr. G.A. Kulkarni, APP for respondent No.1

Mr. A.S. Sawant, Advocate for respondent No.2

...

**CORAM : SMT. VIBHA KANKANWADI &
MANJUSHA DESHPANDE, JJ.**

RESERVED ON : 16th APRIL, 2025

PRONOUNCED ON : 11th JUNE, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 All these applications filed under Section 482 of the Code of

Criminal Procedure, 1973 arise out of the same proceedings and, therefore, taken up together for disposal. All the applicants have been arrayed as accused in First Information Report vide Crime No.306/2022 dated 03.11.2022 registered with Jalgaon Taluka Police Station, Tq. & Dist. Jalgaon, for the offence punishable under Section 417, 419, 420, 465, 467, 468, 471, 120-B read with Section 34 of the Indian Penal Code, 1860. The said First Information Report came to be lodged at the behest of respondent No.2 .

2 Heard learned Advocates Mr. M.G. Patil, Mr. A.N. Nagargoje and Mr. V.B. Patil for applicants in respective matters and learned APP Mr. G.A. Kulkarni for respondent No.1 as well as learned Advocate Mr. A.S. Sawant for respondent No.2, in all matters.

3 The learned Advocates appearing for all the applicants vehemently submitted that respondent No.2 has already filed Regular Criminal Case No.423/2016 before learned Chief Judicial Magistrate, Jalgaon making same allegations against applicants and others. Initially respondent No.2 (Criminal Miscellaneous Application No.79/2014) had prayed for action to be taken under Section 156(3) of the Code of Criminal Procedure. However, by order dated 14.03.2014 learned Chief Judicial Magistrate,

Jalgaon rejected the request of sending the complaint for investigation under the said provisions, however, had kept the complaint for recording verification under Section 200 of the Code of Criminal Procedure. Thereafter, in the said matter, it appears that verification was recorded and inquiry report under Section 202 of the Code of Criminal Procedure was called from the concerned Police Station. Said report Exh.6 was received in Criminal M.A. No.79/2014 and hearing the Advocate for complainant issued the process against accused Nos.1 to 7, for the offence punishable under Sections 120, 182, 417, 419, 420, 465, 466, 467, 468, 471, 472, 473, 474, 475, 476, 477-A read with Section 34 of the Indian Penal Code and Section 120-B of the Indian Penal Code by order dated 02.07.2016. However, thereafter it appears that respondent No.2 managed to get the First Information Report registered vide Crime No.306/2022 on 03.11.2022. In the meantime, respondent No.2 had challenged the order of refusal of sending the matter for investigation under Section 156(3) of the Code of Criminal Procedure in Criminal Revision Application No.119/2017. Learned Additional Sessions Judge, Jalgaon by Judgment and order dated 23.08.2018 had rejected the revision application and upheld the order passed on 20.05.2017 by learned Chief Judicial Magistrate, Jalgaon. In the meantime, the said Criminal Miscellaneous Application came to be registered as Regular Criminal Case No.423/2016. There is total suppression of filing of private complaint by

respondent No.2 in the First Information Report.

4 Learned Advocate appearing for applicant in Criminal Application No.4309 of 2022 and learned Advocate Mr. A.N. Nagargoje appearing for applicant in Criminal Application No.4087 of 2022 have relied on the decision in **T.T. Antony vs. State of Kerala and others** [(2001) 6 SCC 181] and **Upkar Singh vs. Ved Prakash and others** [AIR 2004 SC 4320] and submitted that registration of second First Information Report on the same facts is a gross abuse of process of law. Respondent No.2 and prosecution ought not to have registered First Information Report when already the cognizance of offence has been taken by Magistrate. Second First Information Report suffers from doctrine of *double jeopardy* and the applicants cannot be asked to face the trial twice.

5 Learned Advocate Mr. V.B. Patil appearing for applicant in Criminal Application No.4263/2023 submits that the matter pertains to Trust property and in fact, the proceedings are going on before the Charity Commissioner. Even the Trust has filed Special Civil Suit No.143/2017 before Civil Judge Senior Division, Jalgaon for declaration of sale deed dated 19.07.2013 as fraudulent and *void ab initio*. Therefore, when subject-matter is taken care of by Civil Court twice, there cannot be the cognizance i.e. by

the police on the second occasion. Applicant in his matter is a Chartered Accountant by profession and he has no concern with the Trust. He is not the beneficiary of sale deed and under such circumstance, it would be an abuse of process of law if he is asked to face the trial. The other two learned Advocates appearing for other two applicants submitted that their clients also have not played any active role in the execution of sale deed in question. In fact, it was the internal dispute of Trust and change report was still pending.

6 Per contra, learned APP and learned Advocate for respondent No.2 in all the matters strongly objected applications and submitted that the informant had in fact given a complaint with Jilha Peth Police Station and when cognizance was not taken by the police, he had lodged the private complaint in the form of miscellaneous application, wherein he had prayed for sending the complaint for investigation under Section 156(3) of the Code of Criminal Procedure. The applicants cannot seek advantage in respect of the same because there are already recitals in the application which has been then treated as complaint under Section 2(d) of the Code of Criminal Procedure by the Magistrate. The investigation done up till now would certainly show role played by each of the accused. In fact, the suit property involved in the civil suit pertains to Trust. There are two immovable properties; one admeasuring 66 R from Gat No.338/1 and another

admeasuring 95 R from Gat No.339/A situated in village Pimprala. By forging documents an application for change report was filed before Deputy Charity Commissioner. It was shown that in the Trust there are nine members who are in fact bogus members and even when one of the applicants (as she was shown) Smt. Nirmala Vasant Patil had expired in the year 2008 itself; yet, she was shown to be the member and with the help of two Chartered Accountants false audit report was got prepared in 2010, 2011 and 2012. They were produced along with the change report and thereafter by misleading the Deputy Charity Commissioner, Nashik permission was obtained to sell the lands. In fact, while granting permission a condition was imposed that the sale proceeds should be used for purchasing 7.33 acres of land from Gat No.22/1-B and Gat No.23 within the limits of village Kanalda belonging to one Waman Narayan Rane. In fact, there is no such person staying in the said village. There is no land bearing Gat No.22/1-B in village Kanalda and owner of Gat No.23 is a different person. Accused Gurumukh Jagwani has created false document and other accused persons have helped him. The misappropriated amount is to the tune of Rs.84,98,850/-. Investigation is still going on and, therefore, this is not a fit case where the powers under Section 482 of the Code of Criminal Procedure can be exercised by this Court.

7 At the outset, we would like to consider the history in the matter. One Madhukar Murlidhar Bhangale represents in the capacity as Member Secretary of one Jalgaon Zilla Gram Sudhar Samiti, Kanalda, Tq. & Dist. Jalgaon, which has certain properties belonging to the Trust. The accused persons are stated to be not members of said Trust nor in any way they are concerned with the Trust. In order to grab the Trust property all the accused have committed the fraud, was the contention of respondent No.2. It appears that he filed Criminal Miscellaneous Application No.79/2014 after the sale deed was executed and rejection of the change report on 06.01.2014. The learned Chief Judicial Magistrate by order dated 14.03.2014 refused to send the complaint for investigation under Section 156(3) of the Code of Criminal Procedure and took up the procedure as contemplated under Section 200 of the Code of Criminal Procedure. After recording verification, report under Section 202 of the Code of Criminal Procedure was called from concerned Police Station and a detailed order was passed on 02.07.2016 for taking cognizance of some of the offences and it appears that in respect of other offences it was stated that there is a bar under Section 195 of the Code of Criminal Procedure and, therefore, cognizance under those offences was not taken. The said order dated 02.07.2016 of taking cognizance was challenged before this Court in Criminal Application No.4136 of 2016 by one of the accused i.e. Gurumukh Mehrumal Jagwani. By order dated 26.10.2016 the

Hon'ble the Single Bench of this Court had partly allowed the application. The order of taking cognizance dated 02.07.2016 passed by the learned Chief Judicial Magistrate, Jalgaon in Criminal Miscellaneous Application No.79/2014 came to be set aside. The matter was restored on the File of concerned Court and Court was directed to pass the fresh order, taking into consideration the legal position as it was stated in the order. Thereafter, learned Chief Judicial Magistrate by order dated 20.05.2017 taken note of the order passed by this Court and other documents and once again issued process against accused Nos.1 to 7 for the offences mentioned in the order. It is almost the similar order as regards taking cognizance is concerned. It appears that Madhukar Murlidhar Bhangale in the capacity of Member Secretary challenged the order of rejection of sending the matter for investigation under Section 156(3) of the Code of Criminal Procedure in Criminal Revision Application No.119/2017. Learned Additional Sessions Judge, Jalgaon by order dated 23.08.2018 dismissed the revision application and maintained the order dated 20.05.2017 passed by learned Chief Judicial Magistrate, Jalgaon regarding issuance of process. It can be seen that none of the applicants have come with a case that they have challenged the order of issuing process against them on 20.05.2017 passed by learned Chief Judicial Magistrate, Jalgaon. No document has been produced to show as to how the applicants were concerned with the said Trust property. However,

the copy of the sale deed is on record and the police papers definitely show the collection of various documents including the audited accounts by Chartered Accountants which were submitted before Deputy Charity Commissioner. As regards the sale proceeds are concerned, it is alleged that a separate account was created apart from the account which was shown in the Trust documents and the amount was received therein. If the persons who are not concerned with the Trust property have managed to sell it, then certainly investigation is necessary in the matter.

8 Turning to the point that has been raised that when the cognizance of the offences already been taken in the private complaint, the First Information Report was not maintainable. It is to be noted that what was filed before the learned Chief Judicial Magistrate was a complaint initially for relief under Section 156(3) of the Code of Criminal Procedure. However, that was rejected and then by treating that complaint under Section 2(d) of the Code of Criminal Procedure the further action has been taken under Section 200 of the Code of Criminal Procedure. The complainant was a different person. He was then Member Secretary and respondent No.2 has stated that since 2008 to 2023 he is the President of said Trust. Present First Information Report is under Section 154 of the Code of Criminal Procedure. There is basic difference between a complaint under Section 2(d) and First

Information Report under Section 154 of the Code of Criminal Procedure. What has been prohibited is lodging of second First Information Report on the same set of facts. That means, both the actions should have been under Section 154 of the Code of Criminal Procedure or both the actions cannot be taken under Section 2(d) of the Code of Criminal Procedure in the normal course. Of course, in one of the recent decision in **State of Rajasthan vs. Surendra Singh Rathore** [2025 INSC 248] Hon'ble Supreme Court has laid down under which circumstances the second First Information Report is permissible. Even in case of subsequent complaint under Section 2(d) of the Code of Criminal Procedure unless the first would have been resulted in acquittal, there would be a hurdle. However, subject to explanation in certain circumstances even the second complaint can also be stated to be maintainable. There is no question of involvement of doctrine of *Double Jeopardy* in the present case. There is no final decision or acquittal or conviction of the applicants earlier in the same set of facts. The said criminal private complaint is also pending before the learned Chief Judicial Magistrate, Jalgaon.

9 We would like to take note of Section 210 of the Code of Criminal Procedure which runs thus -

“210. Procedure to be followed when there is a complaint case and

police investigation in respect of the same offence.—(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

Therefore, it can be seen that this provision prescribes complete procedure to be followed when there is a complaint case and police investigation in respect of the same offence. This Section also indicates that there is no bar of lodging First Information Report or continuation of the investigation by police when there is already a complaint instituted otherwise than on a police report i.e. private complaint.

10 The investigation done so far shows involvement of all the accused persons *prima facie* and, therefore, this is not a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. All applications, therefore, stand rejected.

(MANJUSHA DESHPANDE, J.)

(SMT. VIBHA KANKANWADI, J.)

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