



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

**13 CRIMINAL WRIT PETITION NO. 1033 OF 2018
WITH
CRIMINAL APPLICATION NO. 4018 OF 2023**

Suryaprakash s/o Tekchandji Dembda
Age: 50 years, Occu- Business & Agri.,
R/o. Ajinkya Palace, Gurubachan Chowk
Mantha Road, Jalna, Tq. & Dist. Jalna.

... PETITIONER
(Ori. Accused)

VERSUS

1. The State of Maharashtra
Through Police Inspector
Sadar Bazar Police Station,
Jalna
2. Bharatkumar Teckchandji Dembda [Original Complainant]
Age- 65 years, Occu. Nil,
R/o. Flat No.403, Purple Dream City,
Takli Agar Takli Road, Nashik
Maharashtra – 422 006
3. Anita w/o Bharat Dembda
Age – Major, Occu. Housewife,
R/o. Flat No.501, 502, Raj Heights,
Behind Fire brigade office,
Opp. MGM Hospital, Aurangabad
Tq. & Dist. Aurangabad
4. Amit s/o Bharat Demda
Age – Major, Occu. Business,
R/o. Flat No.501, 502, Raj Heights,
Behind Fire brigade office,
Opp. MGM Hospital, Aurangabad
Tq. & Dist. Aurangabad

... RESPONDENTS

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Mr. Ajay G. Talhar a/w Mr. Darshan D. Sahuji, Advocates for the
Petitioner
Ms Chaitali Chaudhari – Kutti, APP for Respondent No.1
Mr. A. M. Karad, Advocate for Respondent Nos. 2 to 4
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CORAM : Y. G. KHOBRAGADE, J.

DATE : 03.03.2025

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and with consent of parties heard finally at the stage of admission.
2. By the present Petition under Article 226 and 227 of the Constitution of India, the Petitioner takes exception to the judgment dated 17.04.2018 passed by the learned Sessions Judge, Jalna, in Criminal Revision Application No.102 of 2013 thereby upheld order of rejection of application for discharge passed by the learned Chief Judicial Magistrate, Jalna, below Exh.17 in Regular Criminal Case No.891 of 2010 on 16.09.2013.
3. The Petitioner is the original accused and the Respondent No.2 is the original complainant in Criminal Misc. Application No.590 of 2009. For the sake of brevity, I would like to refer parties to the

present Petition in their original capacity as the complainant and the accused.

4. Respondent No.2/complainant filed the Criminal Misc. Application No.590 of 2009 and prayed for investigation under Section 156(3) of the Code of Criminal Procedure for the offence under Sections 420, 465, 468, 471, 506(2) of I.P.C. According to the complainant, in the year 1990, he purchased the immovable property bearing C.T.S. No.4700, admeasuring 1394.31 square meter within the limit of Municipal Council, Jalna. However, he was out of Jalna city for education purpose of his children and business. According to Respondent No.2/complainant, he is exclusive owner of said property and nobody is shareholder in said property. However, the Petitioner/accused, taking advantage of his absence, had persuaded his father, Tekchandji Dembda, to execute a Deed of Partition in respect of said property. It is further alleged that, on 06.08.1998, the Petitioner/accused executed the false and bogus partition-deed in respect of property C.T.S. No.4700 by impersonating him and by putting signature of some other person and produced some other person before the Sub-Registrar, Jalna in his place and got executed deed of partition. Therefore, the Petitioner/accused committed an

offence punishable under Sections 420, 465, 468, 471, 506(2) of I.P.C., hence, prayed for investigation under Section 156(3) of Cr.P.C.

5. On 09.12.2009, the learned J.M.F.C. Jalna, passed an order in Criminal Misc. Application No.590 of 2009 and directed the concerned Police Station to conduct investigation under Section 156(3) of Cr.P.C., for the said alleged offences. In pursuance of said order, the Crime M. No. 9 of 2009 registered on 12.12.2009. The Investigating Officer conducted investigation, recorded statements of witnesses and seized the deed of partition dated 06.08.1998 under seizure panchanama. During the course of investigation, the Investigating Officer referred seized deed of partition for examination to the Handwriting Expert with other specimen signatures and thumb impressions of Respondent No.2/ complainant. Accordingly, on 26.08.2010, the Investigating Officer received Expert's Opinion, wherein, it has opined that, the Thumb Impressions appearing on Register of the Sub-Registrar office are not matched with the specimen L.T.P and R.T.P marked A-(L) A-(R) of the Respondent no. 2/complainant Bharatkumar Teckchandji Dembda and specimen L.T.P and R.T.P marked X-(L) X-(R) are of petitioner/accused Shri Suryaprakash Tekchand Demada. Accordingly, the Investigating

Officer filed the charge-sheet against the Petitioner/accused for the offence under Sections 420, 465, 468, 471, 506(2) of I.P.C.

6. After service of summons, the Petitioner/accused appeared before the learned Chief Judicial Magistrate. Thereafter, the Petitioner/Accused filed an application (Exh.17) under Section 227 of Cr.P.C. and prayed for discharge in Crime M. Case No. 9 of 2009 registered.

7. On 16.09.2013, the learned Chief Judicial Magistrate passed order and rejected the Application for discharge. Being aggrieved by said order, the Petitioner/accused filed Criminal Revision Application No.102 of 2013 before the Sessions Court. On 17.04.2018, the learned Sessions Judge, Jalna, passed the impugned Judgment and order and dismissed said Criminal Revision Application. The learned Revisional Court held that, at the stage of framing of charge, the material produced with charge-sheet needs to be considered and probable defence of the petitioner/Accused cannot be considered. Moreover, the material produced on record with the charge-sheet is sufficient to frame charges against the petitioner/accused.

8. Mr. Talhar, the learned counsel appearing for the Petitioner/accused canvassed in vehemence that, as per sale-deed dated 24.09.1990, the Petitioner/accused, Respondent No.2/ complainant, their other brothers with their father Shri Tekchand Sakhavatramji Demba (deceased) have jointly purchased the landed property bearing Municipal No.4515, New No.4194, bearing CTS No.4700 for valuable consideration. Therefore, the Petitioner/accused and Respondent No.2/ complainant are joint owners of the said property along with their brothers. Subsequently, on 06.08.1998, the Respondent No.2, Mr. Tekchandji Dembda, the father of the Petitioner and Respondent No.2 executed partition-deed in favour of the Petitioner/accused. At the time of registration of deed of partition, the Respondent No.2 was personally present before the Sub-Registrar office and received amount of Rs. 20,00,000/- (Rupees Twenty Lakh) by four different cheques. The Respondent No.2 has not denied about acceptance of said amount but only denied his signature on the partition-deed. Therefore, the material available on record appears about existence of civil dispute between the petitioner and Respondent no. 2, hence, said Civil dispute cannot be adjudicated

by the learned Chief Judicial Magistrate. However, the learned trial Court passed the order dated 16.09.2013 below Exh.17 and rejected application of discharge u/s 227 of Cri. P. C., without considering the fact that the material available on record are not sufficient to frame charge against the petitioner/accused, therefore, the learned Chief Judicial Magistrate could have to discharge the Petitioner/accused. So also, the learned Revisional Court totally ignored the material available on record to establish about existence of civil dispute in respect of the property between the petitioner and Respondent no.2. Therefore, impugned order passed by the learned Revisional Court as well as order passed by the learned Chief Judicial Magistrate are illegal bad in law, hence, prayed for quash and set aside.

9. Per contra, Mr. A. M. Karad, the learned counsel for Respondents canvassed that, the Respondent No.2/complainant specifically made averment in complaint that, on 06.08.1998, the Petitioner/accused submitted deed of partition for registration with the Sub-Registrar, Jalna but at that time, the Respondent No.2/complainant was not present in Jalna town. The Petitioner/accused falsely personated the complainant and under false signature

and thumb of Respondent No.2, the petitioner/accused got executed registered deed of partition. Thereafter, on the basis of said deed of partition, the Petitioner/accused got his name mutated in city survey record by playing fraud. The handwriting expert's report shows that, thumb impression appearing on register of the Sub-Registrar are not matched with specimen. Therefore, the material available on record is sufficient to frame charges against the petitioner/accused. Therefore, on 09.12.2009, the learned Chief Judicial Magistrate passed an order and directed investigation under Section 156(3) of Cr.PC. After due investigation, the I. O. filed charge-sheet and handwriting expert's report. Therefore, the material produced on record are sufficient to frame the charge against the Petitioner/accused, hence, prayed for dismissal of the Petition.

10. Needless to say that, the Respondent No.2/complainant filed Criminal Misc. Application No.590 of 2009 alleging that, on 06.08.1998, the Petitioner/accused executed deed of partition before the Sub-Registrar, Jalna under his false and bogus signature and thumb impression. It is not in dispute that, on 09.12.2009, the learned Chief Judicial Magistrate, Jalna, passed the order and directed investigation under Section 156(3) of Cr.PC. in regard to the

allegations made in the complaint. The Investigating Officer registered the crime under M. Case No.9 of 2009 for the offences punishable under Sections 420, 465, 468, 471, 506(2) of I.P.C. It is a matter of record that, the Investigating Officer recorded statements of 19 witnesses and collected specimen signature and thumb impression of Respondent No.2/complainant as well as from the office of Sub-Registrar. The I. O. sent all specimen signatures/ thumb impressions collected during investigation to the Handwriting Expert for examination. The Deputy Director/Deputy Superintendent of Police (FP), Finger Print Bureau, C.I.D., Aurangabad, issued a certificate/ opinion No.16 of 2010 certifying that, the specimen of L.T.P and R.T.P marked A-(L) A-(R) of the Respondent no. 2/complainant Bharatkumar Teckchandji Dembda and specimen L.T.P and R.T.P marked X-(L) X-(R) of accused Suryaprakash Tekchandji Dembda are matched but specimen signature/thumb of Respondent no. 2/complainant Shri Bharatkumar Teckchandji Dembda are not identical with the specimen.

11. Since Respondent No.2/complainant specifically alleged in complaint that, on 06.08.1998, the Petitioner/accused executed deed of partition before the Sub-Registrar by producing the dummy

person in his place and impersonated. The Respondent no.2/ complainant alleged about execution of false and fabricated deed of partition in his absence by manufacturing his signature/thumb impression because he was not available in Jalna city on the day of execution of the registered deed of partition. Therefore, the material placed on record is sufficient to frame charge as per the provisions of Section 228 of Cr.P.C., for the offences under Section 420, 465, 468, 471, 506(2) of I.P.C.

12. Section 227 of Cr.P.C. provides that, if the material produced on record and after hearing the submissions, if the judge considers that there is insufficient ground for proceeding against the accused, in that circumstance, the accused may be discharged after recording reasons. In *State of Tamilnadu By Inspector of Police Vigilance and Anti Corruption Vs. N. Suresh Rajan & Ors, (2014)*¹¹ *SCC 709*, it is held that, at the stage of consideration of application for discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At

this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction.

13. In the case of *Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra, 2012 SC 2991*, it is held that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution.

14. Reverting back to the case-in-hand, the Respondent No.2/complainant specifically alleged that, at the time of execution of deed of partition on 06.08.1998, he was not in Jalna city and he was out of station due to education purpose of his children and due to his business, however, the Petitioner/accused got executed bogus partition-deed in respect of property CTS No.4700 of Jalna by falsely impersonating and by obtaining signature of some other person in his place before the Sub-Registrar. The Investigating Officer has already filed the handwriting expert's opinion, which is sufficient to frame charges against the Petitioner/accused.

15. On 17.04.2018, the learned Sessions Judge, passed the impugned order and upheld the order dated 16.09.2013 passed by the learned J.M.F.C. below Exh.17 in Regular Criminal Case No.891 of 2010 holding that, the material placed on record are sufficient to frame charge against the accused. Therefore, I find that the findings recorded by both the lower courts are just and proper, and do not warrant any interference from this Court. Therefore, the Criminal Writ Petition is dismissed. Accordingly, Rule is discharged. The earlier interim relief, if any, granted earlier is hereby vacated.

16. Since the Criminal Writ Petition is dismissed, Criminal Application No.4018 of 2023 does not survive and therefore it is disposed off.

17. At this stage, the learned counsel for the petitioner requested extension of the interim order dated 20.08.2018 passed by this Court for a period of two weeks, however, said request is hereby rejected because the trial of Crime is pending since last more than 7 years and no cogent grounds are set out.

[Y. G. KHOBRAGADE, J.]