



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

CRIMINAL WRIT PETITION NO. 1867 OF 2023

Rajesh s/o Dhanji Zalte,
Age 55 years, Occ : Legal Practitioner,
R/o Zilla Peth Jalgaon,
Taluka and District Jalgaon.

... **PETITIONER**

V/s.

The State of Maharashtra
Mantralaya, Mumbai.

... **RESPONDENT**

.....
Mr. Rajendrraa Deshmukh, Senior Counsel a/w. Ms. Rakshanda Rajan Jaiswal
i/b. Mr. Devang Deshmukh, Advocates for the Petitioner
Ms. Ashlesha S. Deshmukh, APP for the Respondent-State
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CORAM : Y.G. KHOBRAGADE, J.
RESERVED ON : 29.01.2025
PRONOUNCED ON : 10.02.2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of both sides, heard finally.
2. Heard Mr. Rajendrraa Deshmukh, the learned Senior Counsel appearing for the Petitioner and Ms. Deshmukh, the learned APP for the State at length.

3. By the present petition under Article 227 of the Constitution of India, the Petitioner/Original Accused No.2 takes exception to the order dated 28.07.2022 passed by the Ad-hoc Additional Sessions Judge, Jalgaon in Cri. Revision No. 83 of 2019, thereby affirmed the order dated 22.04.2019 passed by the learned Chief Judicial Magistrate, Jalgaon, in Regular Criminal Case No. 494 of 2011, whereby directed to frame charge against the present Petitioner/Accused for the offence punishable under Section 119, 120, 166, 167, 171, 181, 182, 192, 193, 196, 198, 199, 205, 419, 420, 422, 465, 466, 467, 468, 471 read with Section 34 and 120-B of the I.P.C.

4. Facts giving rise to the present petition are that on 03.12.2010, the learned Principal District and Sessions Judge, Jalgaon received a written complaint from one Shri Prakash Gulabrao Patil, wherein he alleged that the original claimant Shri Chindna Krishna Mang in land acquisition reference proceeding bearing Misc. Civil Application No.47/1993, registered as LAR No.262/1993 died on 22.11.1999 but his legal heirs were not brought on record, however, but the Accused No.1 impersonated himself as the Original Claimant and received the amount of compensation due to acquisition of land of the Original Claimant Shri Chindna Krishna Mang and deprived the legal heirs of Original Claimant to receive the compensation in respect of the acquired land. Therefore, the learned Principal District and Sessions Judge directed the learned CJSD to conduct an enquiry and to submit it's report.

5. Accordingly, the learned Civil Judge Senior Division, Jalgaon conducted an enquiry and examined the record and submitted it's report. As per the inquiry report, the Accused No.1- Sukhdeo Krishna Suralkar and the Petitioner/Accused No.2 in connivance with each other committed fraud on the Court to receive the enhanced compensation. Though, the present Petitioner was duly served with the show cause notice on 07.03.2011 and was called upon him to submit his explanation but he failed to submit his reply. So also, the present Petitioner has identified the fictitious person in all the three Court proceedings. Therefore, act done by the Accused No.1- Sukhdeo Krishna Suralkar (Mang) and Accused No.2 (present Petitioner) for falsification of Court record, playing fraud upon the Court, cheating in the Court proceeding and obtaining the Judgment in the name of a deceased person and getting benefits for themselves.

6. In pursuance of said report, the Complainant Shri Kishor Rajeshwarrao Chaudhari, the then CJSD, Jalgaon filed a Regular Criminal Case No.494/2011 for the offence punishable under Section 119, 120, 166, 167, 171, 181, 182, 192, 193, 196, 198, 199, 205, 419, 420, 422, 465, 466, 467, 468, 471 read with Section 34 and 120-B of the I.P.C. After due compliance of Section 202 of the Cr.P.C., the learned Judicial Magistrate, issued process against both the Petitioner as well as Accused No.1 Shri Sukhdeo Krishna

Suralkar for the said offences. In compliance of service of summons, the present Petitioner appeared before the learned Judicial Magistrate.

7. The prosecution examined PW1-Kishor Rajeshwarrao Chaudhari (CW1) at Exh.57 and Shri Vilas Wamanrao Jahagirdar (CW2) before framing of charge. After recording evidence charge and having been heard both the sides, on 22.04.2019, the learned CJM, Jalgaon passed an order holding that the material available on record is sufficient to frame charge against the Petitioner and Accused No.1- Shri Sukhdeo Krishna Suralkar for the offence punishable under Section 119, 120, 166, 167, 171, 181, 182, 192, 193, 196, 198, 199, 205, 419, 420, 422, 465, 466, 467, 468, 471 read with Section 34 and 120-B of the I.P.C.

8. Being aggrieved by the said order, the Petitioner/Accused No.2 filed Criminal Revision Application No.83/2019 under Section 397 of the Cr.P.C. before the learned Sessions Judge, Jalgaon. On 28.07.2022, the learned Revisional Court passed the impugned order and dismissed the revision petition. Being aggrieved by said order, the Petitioner/Accused No.2 has filed this petition before this Court.

9. The learned senior counsel appearing for the Petitioner canvassed in vehemence that the Petitioner is a Legal Practitioner by profession and is practicing in entire Jalgaon district as well as in various Courts in the State of

Maharashtra. The Petitioner-Accused is specifically dealing in Land Acquisition matters pertaining to enhancement of compensation. Since, the Original Claimant Shri Chindha s/o Krishna Mang had approached the Petitioner, therefore, the Petitioner put his appearance in said land reference after obtaining Vakalatnama from him. However, the Petitioner was not made aware about death of Claimant- Shri Chindha s/o Krishna Mang but later on the Accused No.1 attended the Petitioner time to time. Therefore, the Petitioner presumed that the Accused No.1 is the Claimant- Shri Chindha s/o Krishna Mang and identified him time to time. However, both the learned Courts below failed to appreciate that the Petitioner being a practicing lawyer appeared on behalf of the Claimant in land acquisition proceeding for enhancement of compensation and did not make any pecuniary gain out of enhanced compensation. Therefore, no sufficient material is produced on record to frame the charge against the Petitioner, hence, prayed for quashing and setting aside the impugned orders.

10. It is further canvassed on behalf of the Petitioner that both the Courts below ought to have considered that the Petitioner being an active and leading legal practitioner in Land Acquisition compensation matters and being a normal human being, he cannot remember each and every client who approach him, therefore, the Petitioner cannot be held liable for any mischievous act done by the Accused No.1.

11. It is further canvassed that the Petitioner is being subjected to an action initiated by the concerned Judicial Officer on assumptions and presumptions, when in fact, the then learned Civil Judge, Senior Division in it's enquiry could have taken into account that the Advocate is not expected to remember identity of each and every client, unless legal heirs of Advocate's client approached with specific instructions about death of the Claimant, hence, it is not possible for the practicing lawyer to know about death of his client. However, both the Courts below have failed to consider this aspect of the matter and proceeded to frame the charge, hence, prayed for quashing and setting aside both the orders.

12. It is further canvassed by the learned senior counsel that by no stretch of imagination it can be said that the Petitioner has not filed his say in the inquiry proceeding and avoided to file reply or the Petitioner has chosen to remain silent. Under these circumstance, it is obligatory on part of the learned Civil Judge Sr. Dn., to gather information regarding conduct of the Petitioner from the record of the proceeding and the Petitioner only acted being a legal practitioner in good faith. However, merely the Petitioner did not file his reply, it cannot be held that the Petitioner has committed any fraud, mischief upon the Court and obtained the Judgment in the name of a dead person.

13. It is further canvassed on behalf of the Petitioner that the Petitioner never assisted or identified the fictitious person namely Sukhdeo Krishna Mang but the Petitioner has genuinely represented his client in the land reference proceedings as well as in Execution (Darkhast) proceeding. Therefore, both the Courts below ought to have considered the role played by the Petitioner while conducting legal proceeding and the Petitioner did not receive any fruits from the alleged transaction.

14. The learned senior counsel further averred that the learned Revisional Court has committed a great error in holding that the learned Magistrate is required to consider the question of framing of charge under Section 245 (1) of the Code of Criminal Procedure, is preliminary one and the test of "*prima facie*" has to be applied, when the settled position of law is definitely otherwise. The learned Revisional Court has miserably failed to consider that though the Accused No.1 impersonated himself as Chindha Mang in all the events so happened, the Petitioner had put his signature on various documents being a practicing lawyer, it cannot be said that the Petitioner has committed the alleged offences in connivance with the co-accused.

15. The learned senior counsel appearing for the Petitioner further canvassed that on 12.02.2018, the Single Bench of this Court passed an order in First Appeal No. 442/2004 and other connected matters and observed that

“the endorsement of the Registry indicates that the Sole-Respondent has expired long ago and that is the reason that no service could ever be effected upon the said Sole-Respondent. Despite the fact that these appeals are of the year 2004 but till date no steps have been taken to bring on record the legal representatives of deceased Sole-Respondent. Therefore, the appeals stand abated as against the LRs of deceased Sole-Respondent.

16. Therefore, it is submitted that the Petitioner only acted as being a counsel and merely identified the Accused No.1 who impersonated himself as Ori. Claimant- Shri Chindha Krishna Mang, hence no offences are constituted. Therefore, material placed on record is not sufficient to frame the charge as against the present Petitioner. However, the learned Revisional Court failed to consider the material available on record and recorded perverse findings, hence, prayed for quashing and setting aside the impugned orders passed by both the Courts below.

17. Per contra, the learned APP canvassed that the Petitioner has not challenged the enquiry report submitted by the learned Civil Judge Senior Division. As per inquiry report submitted by the learned CJSD, Jalgaon, it clearly shows that the Petitioner acted being a legal practitioner for the accused No.1 and recorded his examination-in-chief, signed various documents and while conducting the trial he has identified the fictitious person as a genuine

claimant. The Petitioner also represented the fictitious person in executing proceedings after obtaining award in the name of a deceased person. The Petitioner helped the Accused No.1 for withdrawal of the compensation amount to defraud the legal heirs of Ori. Claimant by playing fraud on the Court. So also, the present Petitioner in furtherance of common intention extended all the help to the Accused No.1 for withdrawal of compensation of Rs.98,137/-, for securing the Bank Guarantee, for withdrawal of the execution proceedings by filing pursis as well as for cancellation of the Bank Guarantee. Therefore, material placed on record are sufficient to frame the charge against the Petitioner, hence, prayed for dismissal of the petition.

FINDINGS

18. Having regard to the rival submissions canvassed on behalf of both the sides, I have gone through the record. It is a matter record that deceased-Chindha s/o Krishna Mang has filed the LAQ/1985 on account of acquisition of his land by the State Government, however, the Claimant was not satisfied with the compensation awarded to him by the land acquisition officer. Therefore, he preferred the reference before the Civil Court. It is not in dispute that the land reference was registered with the learned District Judge, Jalgaon vide LAR/Miscellaneous Civil Application No.47/1993 on 27.01.1993. The learned District Judge, Jalgaon, passed an order on 27-1-1993, in L.A.Q./SR.No. HP/32 of 1985 (Registered as LAR/Misc. Civil Application No.47/1993) and issued

notice to the Claimant Shri Chindha s/o Krishna Mang with a direction to produce 7/12 extract, if any, in respect of the acquired land. The notice was also issued to the opponent i.e. Land Acquiring Body. The learned District Judge made over said land reference to the learned 5th Additional District Judge, Jalgaon for disposal according to law. As per order passed by the learned District Judge, Jalgaon, the Misc. Civil Application No.47/1993 was transferred to the Court of learned 2nd Jt. C.J.S.D., Jalgaon from the file of the learned 5th Additional District Judge, Jalgaon. Therefore, said Misc. Civil Application was registered as LAR No.262/1993, wherein the present Petitioner/Accused represented the Claimant being a legal practitioner.

19. It is also not in dispute that during the pendency of said land reference, the claimant Shri Chindha s/o Krishna Mang died on 22.11.1999, however, no legal heirs of the claimant were brought on record. On face of record, it appears that one Shri Sukhdeo s/o Krishna Suralkar (Mang) i.e. the Ori. Accused No.1 impersonated himself to be the original claimant Shri Chindha Krishna Mang and entered into the witness box. Therefore, his evidence came to be recorded on 13.01.2000 under the pretext that he is the Ori.Claimant- Chindha Krishna Suralkar (Mang). The Petitioner being a Counsel for the Claimant recorded further examination-in-chief of Shri Sukhdeo s/o Krishna Suralkar (Mang). The Accused No.1- Sukhdeo Krishna Suralkar (Mang) has undergone cross-examination. After evidence is over, on

13.04.2000, the learned 2nd Jt. C.J.S.D., Jalgaon passed the Judgment and Award and partly allowed the Reference No. LAR 262/1993 and granted compensation of Rs.98,137/-.

20. Thereafter, Accused No.1-Sukhdeo Krishna Suralkar (Mang) filed an Execution Darkhast No.562/2001 pretending himself to be the Ori. Claimant- Shri Chindha Krishna Mang. The Petitioner represented the Accused No.1 in the Award Execution proceedings being a legal practitioner. The Ori.Accused No.1 Shri Sukhdeo Krishna Suralkar (Mang) put his thumb impression posing himself to be the Ori.Claimant- Shri Chinda Krishna Mang. and the Petitioner/ Accused No.2 allegedly put his signature certifying that he knows the Accused No.1 as Ori.Claimant- Shri Chinda Krishna Mang. It is further evident that during the pendency of execution proceeding, the Judgment Debtor/Land Acquiring Body deposited the entire compensation amount and the Petitioner being a counsel for the claimant moved an application and sought permission to withdraw the compensation amount. Accordingly, on 11.02.2022 the learned CJSD, Jalgaon passed an order and permitted to withdraw the compensation of Rs.98,137/- to the decree holder namely Chindha Krishna Mang on furnishing Bank Guarantee of a Nationalised Bank.

21. Needless to say that in compliance of said order, the Petitioner/Accused produced Bank Guarantee of the Nationalised Bank on 22.02.2022 in the name of Chindha Krishna Mang (Ori. Claimant). Therefore, amount of compensation was made in the name of Ori. Accused No.1 after being identified by Petitioner as a Counsel. Thereafter, on 04.11.2006, the Accused No.1 had allegedly withdrawn amount of compensation from the Western Bank by impersonating himself as Chindha Krishna Mang (Ori. Claimant) and allegedly moved an application through the Petitioner (Advocate) for cancellation of Bank Guarantee. Accordingly, the Petitioner filed *pursis* under his signature before the Executing Court for withdrawal of the execution proceeding, hence, execution proceeding was disposed of. Therefore, there is presumption that being a counsel the Petitioner received monetary benefits and acted in collusion of the Accused No.1 and did not disclose fact of death of original claimant to the Court.

22. Further, the execution proceedings bearing Regular Darkhast No.562/2001 was instituted in the name of Ori.Claimant- Chindha Krishna Mang (Suralkar) and the Accused No.1 pretended himself to be the Ori.Claimant- Chindha Krishna Mang (Suralkar) put his thumb impression and the present Petitioner identified the Accused No.1 as being the Ori.Claimant- Chindha Krishna Mang (Suralkar). The material placed on record as well as the evidence of CW1 and CW2 recorded by the learned CJM before framing of

the charge itself suggests that the present Petitioner-Accused played an active role in adjudicating the land acquisition proceedings before the Reference Court while obtaining the award. So also, the Petitioner played a substantial role in filing the execution proceedings and withdrawal of the compensation amount by depriving the right of legal heirs of Ori. Claimant as well as by playing fraud on the Court in the Court proceedings. Since the Petitioner-Accused met the original claimant for the first time, who introduced the file and executed the Vakalatnama, hence, there is presumption that the Petitioner was well acquainted with the Ori. Claimant but he again identified fictitious person i.e. the Accused No.1. It further appears that the Petitioner accused has also gained monetary benefits.

23. Therefore, essential ingredients of Section 406 and 420 read with Section 34 is certainly made out to frame the charge. The material available on record is sufficient to presume that the Petitioner/Accused along with the Accused No.1 in connivance with each other have committed the above said offences. Therefore, considering the material available on record, the learned CJM passed the order dated 22.04.2019 and proposed to frame the charge against the Present Petitioner and the Co-Accused.

24. Section 240 of the Cr.P.C. provides as under:

Framing of Charge – 1. *If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such*

Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

2. The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

Section 245 of the Cr.P.C. provides as under:

When accused shall be discharged- *1. If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.*

2. Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

25. The learned Revisional Court considered the scope of Section 240, 245 (1) and 246 of the Cr.P.C. and held about existence of sufficient grounds and material to proceed against the present Petitioner-Accused for the offence punishable under Section 119, 120, 166, 167, 171, 181, 182, 192, 193, 196, 198, 199, 205, 419, 420, 422, 465, 466, 467, 468, 471 read with Section 34 and 120-B of the I.P.C. and to frame the charge. Therefore, I do not find that the Petitioner has set out substantial grounds to interfere with the findings recorded by both the Courts below. Therefore, the present petition is dismissed. Accordingly, Rule is discharged.

[Y.G. KHOBRADE, J.]