

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3038 OF 2024

Yadunath Chaudhari	)	
Age 62 Years, Occ. Advocate	)	
Indian Inhabitant,	)	
having Office at 206, Hamam House,	)	
2 nd Floor, Hamam Street,	)	
Ambalal Doshi Marg, Fort,	)	
Mumbai-400 023.	)	... Petitioner

V/s.

- | | | | |
|----|---------------------------------------|---|-----------------|
| 1. | The State of Maharashtra |) | |
| | (Being CR No.40/2024, registered with |) | |
| | Colaba Police Station Mumbai City) |) | |
| | Through Public Prosecutor, |) | |
| | High Court, Criminal Side, |) | |
| | Bombay. |) | |
| 2. | The Sr. Police Inspector |) | |
| | Colaba Police Station, |) | |
| | Mumbai. |) | |
| 3. | Surendrakumar Jain |) | |
| | Age 74 years, Occupation : Not known |) | |
| | Residing at 107/A-B Wing, |) | |
| | Kusum Vihar, Near Banjara Hotel, |) | |
| | Virar (West), Palthar |) | ... Respondents |

Mr. Prasad Dhakephalkar, Senior Advocate (through V.C.) a/w Mr. Omkar Kulkarni and Mr. Chinmaya Acharya for the Petitioner.

Mr. V. B. Konde Deshmukh, Addl. P.P. for the Respondent No.1-Sate.

Mr. Sanjeev Punalekar a/w Mr.Viral J. Bhanushali for Respondent No.3.

Mr. Dattatray Gurav, Police Inspector, Colaba Police Station, Mumbai.

**CORAM : REVATI MOHITE DERE &
SANDESH D. PATIL, JJ.**

**RESERVED ON : 10th DECEMBER 2025
PRONOUNCED ON : 24th DECEMBER 2025**

JUDGMENT (Per Sandesh D. Patil, J.)

- 1) Heard learned Counsel for the parties.
- 2) **Rule.** Rule is made returnable forthwith and by consent of the parties, taken up for final disposal.
- 3) Mr. V.B. Konde Deshmukh, learned Addl. P.P. waives notice on behalf of the Respondent No.1-State. Mr. Sanjeev Punalekar, waives notice on behalf of the Respondent No.3.
- 4) By the present Writ Petition, the Petitioner is praying for quashing of the F.I.R., registered vide C.R. No.40 of 2024, with the Colaba Police Station, Mumbai, for the alleged offences punishable under Sections

120-B, 177, 34, 420, 467, 468, 471 and 465 of the Indian Penal Code, 1860.

5) The case of the Respondent No.3-Surendrakumar Jain (hereinafter referred to as the '**Complainant**') is that he was appointed as a developer by the residents of one Gorakshak Chawl and Shrikrishna Housing Society for the purpose of carrying out the redevelopment of their properties. It is the Complainant's case that since he was in some financial difficulty, he approached M/s Darshan Construction, and that pursuant to the talks between him and M/s Darshan Construction, a Memorandum of Understanding ("**MoU**") was entered into between the parties on 11th September 2000; and that under the MoU, M/s Darshan Construction agreed to give an amount of Rs.20,00,000/- and a constructed area of 1500 sq. ft. in lieu of assignment of the rights of by the Complainant. The Complainant has further alleged that despite passage of two years, M/s Darshan Construction did not carry out the construction work as per the MoU dated 11th September 2000 and hence, in October/November 2002, he approached Mr. Rajendra Jain of M/s Darshan Construction. According to the Complainant, Mr. Rajendra Jain of M/s Darshan Construction suggested him, to take a loan on the

said MoU dated 11th September 2000 and accordingly, introduced him (Complainant) to Mr. Hukmichand Jain; and that Mr. Hukmichand Jain, in turn took Rs.5,00,000/- from one Mr. Parasmal Jain and the remaining amount of Rs.15,00,000/- from other persons and gave it to the Complainant on 1st April 2003. Since a huge amount of Rs.20,00,000/- was obtained by the Complainant from Hukmichand Jain, on 3rd December 2002, Hukmichand and the Complainant entered into an MoU for the purpose of securing repayment of Rs.20,00,000/-. The Complainant has further alleged that as per the instructions of Hukmichand, he deposited four blank cheques of Rs.5,00,000/- each, and two blank papers, all signed by him, with Hukmichand; that it was mentioned in the said MOU, that if the said cheques were not cleared, the rights which were obtained by the Complainant *vide* MOU dated 11th September 2000, would in turn go to Parasmal Jain; and that it was expressly decided that till the said amount was repaid, the documents, mainly the MoU dated 11th September 2000 would be kept in Escrow with Hukmichand Jain and after the amount was repaid by the Complainant, Hukmichand Jain would return the said document. It is the Complainant's case, that in August, 2003, since the amount was not repaid, Hukmichand Jain asked him to give a blank

stamp paper of Rs.100 duly signed by him; and that believing upon the representation of Hukmichand Jain, he signed a blank stamp paper of Rs.100/-. The Complainant has alleged that when he arranged the entire money, he went to Hukmichand Jain and asked for return of the document, i.e. MOU dated 11th September 2000, Hukmichand told him, that the papers were given to Parasmal Jain. According to the Complainant, he was shocked on learning the same, pursuant to which he went to Parasmal Jain, who in turn told him, that he had given the said document to Rajendra Jain. Pursuant thereto, the Complainant went and lodged the complaint in January, 2006 with the Deputy Police Commissioner, EOW, who forwarded the same to the L.T. Marg Police Station. It appears that the L.T. Marg Police Station informed the Complainant that the dispute was of civil nature, pursuant to which, the Complainant filed a Civil Suit, being Civil Suit No.2470 of 2006 in the City Civil Court, Mumbai. During the course of hearing, it appears that the blank stamp paper which was signed by the Complainant (which is subject matter of dispute) was produced before the Court by the Advocate of M/s Darshan Construction, i.e. Mr. Yadunath Chaudhari, the Petitioner. The City Civil Court dismissed the suit. The Appeal filed by the Complainant in the High Court was dismissed in the year 2007,

as withdrawn. In the year 2013, Hukmichand allegedly revealed to the Complainant that the stamp paper on which the document in question was executed, was prepared by the Petitioner and hence, the present complaint was filed which is registered vide F.I.R.- C.R.40 of 2024, as against the Petitioner and others.

6) Mr. Prasad Dhakephalkar, learned Senior Counsel appearing for the Petitioner contended that the dispute essentially was between Rajendra Jain, Hukmichand Jain, Parasmal Jain and the Complainant, regarding the development rights under the MOU and that the dispute was civil in nature. He further states that the first complaint made by the Complainant (Respondent No.3) on 3rd November 2006 with the L.T. Marg Police Station, was against Rajendra Jain and others (not the Petitioner) and that the L.T. Marg Police Station on 1st April, 2006, after inquiry informed the Complainant, that the complaint was civil in nature and therefore, the said complaint was closed. Learned Senior Counsel submitted that the Complainant accepted the closure of the complaint and filed a Civil Suit in 2006, before the City Civil Court, Mumbai, against M/s Darshan Construction, Rajendra Jain and Hukmichand Jain (not the Petitioner) for specific performance of the MoU dated 11th

September 2000. That said suit was dismissed on 22nd December 2006, on the premise that the suit was barred by limitation and was not properly valued. In Appeal from Order No.129 of 2007, this Court also observed that the suit was not properly valued and needed to be presented before the appropriate court. Learned Senior Counsel further submitted that accordingly the Advocate for the Complainant had withdrawn the suit with liberty to file a fresh suit, on 13th March 2007 and that till today, the fresh suit has not been filed. Mr. Dhakephalkar, contended that after 2007, the Complainant went into a slumber, for almost 8 long years and again on 11th November 2014 made a complaint with the L.T. Marg Police Station, Mumbai; and that in the said complaint, the Complainant alleged that Hukmichand Jain had disclosed to him in 2013, that on the instructions of Rajendra Jain, Hukmichand Jain and Parasmal Jain and Mr. Yadunath Chaudhari (Petitioner) had prepared a declaration on a blank stamp paper of Rs.100/- and had given it to Hukmichand Jain, in 2003. Once again, the said complaint was closed by the L.T. Marg Police Station, Mumbai, stating that the complaint was civil in nature.

7) Mr. Prasad Dhakephalkar, learned Senior Counsel for the

Petitioner further submitted that again after dismissal of the said complaint, in the year 2024 i.e. on 24th February, 2024, the Complainant filed the present complaint wherein, he has made the aforesaid allegations. He submitted that the FIR, is clearly an abuse of the process of law and that the same is lodged only to blackmail the Petitioner and to get the time barred claim settled. Mr. Prasad Dhakephalkar, learned Senior Counsel for the Petitioner further contended that Hukmichand Jain was a party defendant in Civil Suit No.2470 of 2006, wherein he had filed an affidavit on oath, opposing the suit and that in the said affidavit, he had stated that he was not concerned with the transaction between the Complainant, Rajendra Jain and Parasmal Jain and that he was wrongly impleaded in the suit. Mr. Dhakephalkar, submits that once having said so, on affidavit, it is very absurd for the Complainant to now say, that Hukmichand Jain told the Complainant that it was the Petitioner, who had made the corrections and got the stamp paper typed. Mr. Dhakephalkar further submitted that the Petitioner was a lawyer and apart from appearing for Rajendra Jain as a lawyer in year 2006, he was not in anyway, concerned with the transaction between the parties. He relied upon the judgment in the case of *Abhishek Vs. State of Madhya Pradesh* reported in (2023) SCC 666, to bolster his submission.

8) Mr. Konde Deshmukh, the learned Addl. P. P. for the Respondent Nos.1 and 2, submitted that there is one statement of Hukmichand Jain recorded under Section 164 of the Cr. P. C. He handed over the said statement for our perusal. Learned Addl. P.P., however, does not dispute, that previously on two occasions, the complaints were 'filed' by the Police. In the end, he stated that appropriate Orders be passed in the interest of justice.

9) Mr. Sanjeev Punalekar, learned Counsel for the Respondent No.3- Complainant opposed the Petition. He contended that although it appears that the transaction is of a civil nature, yet on an indepth reading of the F.I.R., offences are made out. He states that the submission of the learned Addl. P.P., that the statement under Section 164 of the Criminal Procedure Code is contrary to that recorded under Section 161 cannot be gone into at this stage, as a mini trial cannot be held. He stated that the Petitioner can very well face trial. He submits that the closing of the civil case, was due to non-availability of the relevant documents and also on account of failure on the part of his Advocate in the Civil Court, to support him. He stated that, it is impossible that the

Complainant would sign such a declaration on a blank stamp paper of Rs.100, especially, when he had made payment of the entire amount. He stated that the Petitioner has acted as an Advocate for the Developer and he has presented the said document. He contended that the area of 1500 sq. ft. has been misappropriated by the developer, and the Petitioner had helped him in doing so. Mr. Punalekar, submitted that the Petitioner had complete knowledge and the requisite intent to commit the crime. He stated that the other accused persons are ordinary persons, however, the Petitioner is a legal expert, who has guided others in creation of a bogus document i.e. MoU and in the commission of the crime.

10) Having heard the learned Counsel appearing for the parties and after perusing the documents on record, it is clear that the entire case revolves around the document, namely, a declaration which is typed on a 100/- Rs., stamp paper. The Complainant does not dispute his signature on the said declaration. He, however, states that the contents are typed on the said document by the Petitioner. The said document is at **Exhibit 'T'**, to the present Petition. The said document was executed on 7th August 2003. Admittedly, the Complainant had filed his first complaint against Rajendra Jain and others (not the Petitioner), on 3rd February

2006 and 29th March 2006, with the L.T. Marg Police Station, Mumbai. Admittedly, the Police of L.T. Marg Police Station had on 1st April 2006, informed the Complainant that the dispute is civil in nature, and accordingly, the complaint was filed. Admittedly, the Complainant, had filed Civil Suit No.2470 of 2006 (Suit for specific performance), before the City Civil Court, Mumbai, which was withdrawn *vide* Order dated 13th March, 2007 as per the Order passed in the Appeal from Order No.129 of 2007 filed in this Court. Infact, in the F.I.R. itself, the Complainant has stated that in the civil suit, the document, i.e. the declaration was submitted by the Petitioner. Thus, pausing here for a moment, it is clear that the Complainant was aware of the document in question, even on 22nd December 2006, however, the Complainant had neither bothered to get the said document nor bothered to initiate any proceeding against the Petitioner based on the said document on or after 22nd December 2006. Thereafter, the Complainant once again filed a written complaint with the L.T. Marg Police Station, somewhere in the year 2014, which complaint was closed on 3rd April 2015, after inquiry, once again, on the premise, that the dispute was civil in nature.

11) The Respondent No.3, having failed on two occasions, to get his

complaint lodged against the Petitioner and having failed before the Civil Court, to get any relief in the suit and further, not having filed any proceeding, despite the leave granted by this Court on 13th March 2007, in Appeal from Order No.129 of 2007, the conduct of the Complainant in not taking any steps *qua* the Petitioner, appears quite unusual.

12) It is also pertinent to note, that the Complainant filed his complaint once again on 24th February 2024, with the Colaba Police Station. In the said complaint, the Complainant for the first time, has alleged that it was Hukmichand Jain, who informed him (Complainant) that the contents of the document in question were typed on a blank stamp paper (signed by the Complainant) by the present Petitioner. This statement itself obviously appears to be shrouded with suspicion, in as much as, Hukmichand Jain had filed an Affidavit on oath in civil Suit No.2470 of 2006, opposing the said suit, stating therein, that he had no concern with the transaction between the Complainant, Surendra Jain, Rajendra Jain and Parasmal Jain.

13) The entire conduct of the Complainant *vis-a-vis* allegations against the Petitioner for the first time, appears to be shrouded with suspicion.

It is very difficult to believe that the Complainant who had lost his alleged rights in the property in the year 2006, when the document was produced before the City Civil Court, would not bother to challenge that document and/or take necessary steps in connection with the said document. Infact, he slept over his alleged right from 22nd June 2006, (the date on which, the said suit was dismissed) till February, 2024. The conduct of the Complainant smacks of *mala fide*. Having failed in his attempt atleast on two occasions to register an FIR with the L.T. Marg Police Station, Mumbai, the present FIR is lodged with the Colaba Police Station. In any event, the Complainant is not disputing his signature on the said document. He, after about more than 21 years, for the first time, has introduced a new case, that the document in question i.e. declaration dated 7th August 2003, is typed by the Petitioner and the same was informed to him, by Hukmichand. We must add at this juncture, we are not at all dealing with the case of the other accused in the present F.I.R. We are only examining the contentions *qua* the present Petitioner, who has merely discharged his duty as an Advocate and has produced the said document before the City Civil Court on the basis of which the Order was passed by the City Civil Court, dismissing the suit of the Complainant on 22nd December 2006. Although, the AO was withdrawn

by the Complainant in the High Court, despite liberty being granted, no proceeding was filed by the Complainant.

14) In any event, having regard to the allegations made against the Petitioner, we find no merit in the same.

15) We must note at this juncture that as per the dictum of the Apex Court in *State of Haryana & Ors Vs. Bhajan Lal & Ors., reported in 1992 SCC (Cri) 426*, we are satisfied that the present proceeding qua the Petitioner is an abuse of process of law. The allegation made in the F.I.R. qua the Petitioner are an afterthought and appear to be maliciously made. Even on a plain reading of the F.I.R., no case can be said to have been made out against the present Petitioner. The long delay in filing the present F.I.R., involving the Petitioner also speaks volume.

16) For the reasons mentioned above, we pass the following Order.

: Order :

- (i) F.I.R. No. 40/2024, dated 24th February 2024, registered with Colaba Police Station, u/s 120-B, 177, 34, 420, 467, 471 and 465 of the Indian

Penal Code, 1860, *qua* the Petitioner is quashed and set aside.

(ii) Rule is made absolute on the aforesaid terms. The Petition is allowed and disposed of accordingly.

(iii) There shall be no order as to costs.

17) We once again make it clear, that the observations made by us while disposing of the present Petition are limited for the disposal of the Petition and should not come in the way while deciding the case against other accused persons.

18) All parties to act on the authenticated copy of this Order.

(SANDESH D. PATIL, J.)

(REVATI MOHITE DERE, J.)