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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO.91 OF 2025

1. Sou.Alka H.Barde @ Ku.Alka
Prabhakar Ghonge, aged about 44
years, occupation service, r/o 264/265,
Prasad Apartment, Amba Nagar,
Dighori, Nagpur.
2. Harish Janardhan Barde,
aged about 46 years, occupation private,
r/o 264/265, Prasad Apartment,
Amba Nagar, Dighori, Nagpur.
3. Smt.Padma Prabhakar Ghonge,
aged about 72 years, occupation private,
r/o Sawarmendha, tahsil Saoner,
district – Nagpur.
4. Sonu s/o Janardhan Barde,
aged about 44 years, occupation private,
r/o 264/265, Prasad Apartment,
Amba Nagar, Dighori, Nagpur. **Applicants.**

:: VERSUS ::

1. Smt.Sunita Jayant Ghonge,
aged about 49 years,
occupation : household,
r/o c/o P.P.Lunge, plot No.101,
New Subhedar Layout, Nagpur.
2. State of Maharashtra. **Non-applicants.**

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Shri D.V.Mahajan, Counsel for the Applicants.
Mrs.Seema Dhotre, Counsel for NA No.1.
Shri Amit Madiwale, Additional Public Prosecutor for NA
No.2/State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 08/08/2025

PRONOUNCED ON : 03/09/2025

JUDGMENT

1. Heard learned counsel Shri D.V.Mahajan for the applicants, learned counsel Mrs.Seema Dhotre for the non-applicant No.1, and learned Additional Public Prosecutor Shri Amit Madiwale for the State. **Rule.** Rule made returnable forthwith.

2. The present application is filed under Section 482 of the CrPC (528 of the BNSS) by claiming following reliefs:

(i) quash and set aside the proceedings bearing Regular Criminal Case No.618/2022 pending on the file of

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learned Judicial Magistrate First Class, Corporation Court No.2, Nagpur (Annexure-B);

(ii) further quash and set aside impugned order dated 30.5.2024 passed in Regular Criminal Case No.618/2022 by the learned Judicial Magistrate First Class, Corporation Court No.2, Nagpur (Annexure-B);

(iii) stay the further proceeding of Regular Criminal Case No.618/2022 pending on the file of learned Judicial Magistrate First Class, Corporation Court No.2, Nagpur (Annexure-B), during the pendency of present application;

(iv) grant ad-interim relief in terms of prayer clause (iii), and

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(v) grant any other relief which deems fit in the facts and circumstances of the present case in the interest of justice.

3. Brief facts necessary for disposal of the application are as under:

Non-applicant No.1 is legally wedded wife of Jayant (the deceased) and their marriage was solemnized on 8.3.2010. Due to the discord between them, she left the house and was staying separately. The deceased was owner of plot situated at mauza Gorewada, Nagpur, having khasara Nos.20/3 and 20/4 bearing plot no.75. Applicant No.1 is her sister-in-law, applicant No.2 is husband of applicant No.1, applicant No.3 is her mother-in-law, and applicant No.4 is brother of applicant No.2.

4. The wife filed a complaint on an allegation that taking advantage of serious illness of her husband,

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who was suffering from cancer, the applicants got executed Power of Attorney and a Registered Will in their favour on 18.2.2019. The applicant misrepresented the property in dispute and in collusion prepared false report and not paid single pie to her and not borne the medial expenses. They have sold out the said property and misappropriated the consideration amount and, therefore, she approached to the Court of JMFC by filing application under Section 156(3) of the CrPC. The JMFC has issued process against the applicant.

5. Being aggrieved and dissatisfied with the same, the present application is filed on the ground that allegations levelled against them are baseless as the sale deeds are executed by the deceased. The statement recorded of the deceased itself shows that he himself sold the properties and utilized the said amount for his own expenses. It was the deceased who executed the sale deed and, therefore, no *prima facie* case is made out

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against the applicants for issuance of process and, therefore, order of issuance of process as well as the entire prosecution against them deserves to be quashed and set aside.

6. Learned counsel for the applicant reiterated the said contentions and invited my attention to the sale deeds executed by the deceased himself and submitted that the sale deeds are executed by the deceased. The consideration is also accepted by him, which is substantiated by his statement, which discloses that as he was suffering from cancer and he was not having sufficient means, he sold out plots situated at Gorewada, Nagpur as well as he executed the sale deed of his agricultural field to utilize the amount for his medical expenses. Thus, he submitted that recital of the statement and the sale deeds shows that no *prima facie* case is made out against the present applicants. In view

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of that, the complaint and the prosecution deserve to be quashed.

7. *Per contra*, learned counsel for non-applicant No.1 supported the order passed by learned JMFC and submitted that considering the allegations against the applicants, the case is made out under Sections 403, 405, 406, 415, 417, 419, 420, 425, 427, 440, 503, and 506 of the IPC and issued process.

8. On hearing both the sides and perusing the record, it reveals that the deceased and non-applicant No.1 are husband and wife. The deceased executed a Will in favour of applicant No.1. The said Will is attested by two witnesses. Whether the said Will is genuine or not, requires to be considered by the Civil Court. Admittedly, the sale deeds placed on record show that the said sale deeds are executed by the deceased himself. As per the allegations in the complaint, applicant Nos.2 and

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3 insisted the husband of non-applicant No.1 to execute the Power of Attorney and Will in favour of the applicant No.2 by deceiving him. After executing the above said documents, the applicant No.3 searched customers for the plot and the deceased executed sale deeds and thereby duped the deceased as well as the non-applicant No.1. Perusal of the documents reveals that the Power of Attorney was executed. Recital of the Will shows that he has executed the said Will with an intention to have smooth relationship between his family members after his death And there should not be any dispute amongst them and thereby bequeathed his property to the applicant No.1 after his death. His statement recorded by the police in other criminal complaint, especially by Hudkeshwar Police, wherein he has specifically stated that he has sold out plot and agricultural land for incurring expenses for his medical treatment.

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9. Thus, *prima facie* material sufficiently shows that the properties are sold out by the deceased himself and he obtained the amount.

10. The powers under Section 482 of the CrPC are very wide. The court has to exercise powers cautiously especially when there is abuse of process of law. Though inherent powers of this court under Section 483 are wide in amplitude, yet they are not unlimited. No absolute Rule is laid down as to the exercise of the said powers where the allegations in the FIR or the complaint taken at their face value and accepted in their entirety do not *prima facie* constitute the offence alleged. It would be justifiable in invoking its powers under Section 482 of the Code to quash criminal proceedings.

11. Perusal of the order passed by learned JMFC shows that it is only recorded that the complainant has prayed for issuance of process against the accused. It is

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alleged that they have committed offence by way of misappropriation of the disputed property and amount and thereby committed breach of trust and thereby issued process. In fact, this allegation itself is not substantiated in the light of the statement of the deceased himself recorded in another criminal proceeding registered on the complaint of the non-applicant No.1. In the light of the said statement, no case is made out showing that it was the applicants who got executed the said Will or insisted the deceased to execute the sale deeds and utilize the amount.

12. Perusal of the entire record shows that no *prima facie* material is brought on record to substantiate the allegations as no offence is made out and the learned JMFC has not recorded the reasons on what basis he came to conclusion as to the *prima facie* satisfaction that the applicants have committed the offence. Continuation of the criminal proceeding in absence of any material
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would be abuse of process of law. Issuing of the summons is a serious act. While issuing process, learned JMFC ought to have considered as to whether there is any *prima facie* material for issuance of process and the satisfaction requires to be recorded which is absent in the present case and, therefore, continuation of the criminal proceeding against the applicants would lead to abuse of process of law.

13. In this view of the matter, I proceed to pass following order:

ORDER

(1) The Criminal Application is **allowed**.

(2) The proceeding bearing Regular Criminal Case No.618/2022 pending on the file of learned Judicial

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Magistrate First Class, Corporation Court No.2, Nagpur is hereby quashed and set aside.

(3) The order of issuance of process is also quashed and set aside.

Rule is made absolute in the above said terms.

Application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!