



Judgment

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

CRIMINAL APPLICATION (APL) NO.229 OF 2024

Devendra Murari Pise,
age 54 years, occupation service,
r/o Shabir Jiwani Layout, Shesh
Nagar, taluka Bramhapuri, district
Chandrapur. **Applicant.**

:: V E R S U S ::

The State of Maharashtra,
through Police Station Bramhapuri,
taluka Bramhapuri,
district Chandrapur. **Non-applicant.**

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Shri F.T.Mirza, Senior Counsel assisted by Shri P.S.Thakur,
Advocate for the Applicant.
Shri M.K.Pathan, Additional Public Prosecutor for the Non-
applicant.
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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 27/01/2025
PRONOUNCED ON : 10/02/2025

JUDGMENT

1. This application under Section 482 of the Code of
Criminal Procedure is for quashing and setting aside the

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impugned order dated 26.10.2023 passed by learned Sessions Judge, Chandrapur and the impugned order dated 19.12.2020 passed by learned Judicial Magistrate First Class, Bramhapuri rejecting the discharge application.

2. Facts necessary for disposal of the application are as under:

The applicant, who is accused No.1, is the President of “The Young Engineers Education Society, Kurkheda, district Chandrapur” having various educational institutions at Bramhapuri. The said Society is having 13 acres of land in Bhetada, taluka Bramhapuri, district Chandrapur. On the said property, the above education Society runs various institutions. One Raghuvir Somaji Bawankule, was Principal of the Maharashtra Institution of Education, which is run by the above education Society, during 2010-2016. The above Society

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was intending to start an Engineering College at this premises in the year 2015 and said Raghuvir Somaji Bawankule was assigned to complete all formalities for preparing proposal to start the College. Said Raghuvir Somaji Bawankule did all formalities and proposal was submitted. Initially, the All India Council for Technical Education (AICTE) granted permission. In the year 2016, it revealed that the forged documents were submitted. Prior to that, Said Raghuvir Somaji Bawankule was removed from the services as it reveals that he has submitted forged documents with respect to his qualification and, therefore, FIR was registered at Kurkheda Police Station against said Raghuvir Somaji Bawankule under Sections 406, 417, 418, 419, 420, 467, 468, 471, 504, and 506 read with 34 of the IPC.

3. Due to grudges, said Raghuvir Somaji Bawankule made complaint against the applicant to the Sub

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Divisional Officer at Bramhapuri alleging that the applicant has prepared the forged documents for starting New Engineering College at Bhetada, taluka Bramhapuri, district Chandrapur. One FIR was registered against the applicant vide Crime No.335/2017 under Sections 420, 468, and 471 read with 34 of the IPC. Subsequently, the AICTE and the Government of Maharashtra withdrew the approval granted to the College. After completion of investigation, chargesheet is submitted against the applicant and other office bearers and Regular Criminal Case No.28/2018 was registered which is pending before learned JMFC at Bramhapuri. During pendency of the said case, the applicant has filed an application for discharge. Learned JMFC at Bramhapuri rejected the discharge application on 19.12.2020. The said order was challenged before the Sessions Court at Chandrapur. Learned Sessions Judge at Chandrapur also rejected the

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application by dismissing Criminal Revision Application No.2/2021 by order dated 26.10.2023

Hence, this application.

4. Heard learned Senior Counsel for the applicant and learned Additional Public Prosecutor Shri M.K.Pathan for the State.

5. Learned Senior Counsel for the applicant submitted that the applicant is the President of the said Society. Raghuvir Somaji Bawankule was assigned to complete all formalities for preparing proposal to start the College. Said Raghuvir Somaji Bawankule did all formalities and the applicant has only submitted the proposal before the Authority. The NA order was found to be forged. In fact, the College was never started. The statements of the witnesses show that it was Raghuvir Somaji Bawankule who brought documents. Said Raghuvir Somaji Bawankule has suppressed that initially the crime was

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registered against him on the basis of report lodged by the applicant. While considering application under Section 156(3) of the Code, it was not brought to the notice of learned Magistrate that initially the crime was registered against Raghuvir Somaji Bawankule vide Crime No.267/2017. The direction of learned Magistrate to register the offence against the applicant was challenged before this court in Criminal Application No.580/2018 wherein the Single Bench of this Court has observed that learned Magistrate would have been well equipped while exercising jurisdiction under Section 156(3) of the Code to apply his mind in a judicious way as expected in law. On suppressing the material facts, Raghuvir Somaji Bawankule has obtained the said order with a view to pressurize the applicant to surrender before him. In view the said observations, learned Magistrate and Sessions Judge ought to have discharged the applicant from the

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charges. He also invited my attention towards various statements of the witnesses and submitted that statements of these witnesses disclose that the documents were collected by Raghuvir Somaji Bawankule and the applicant has no role in forgery of the documents. Thus, there is no *prima facie* material against the applicant as to the forgery. The Revisional Court has not considered the requirement and wrongly rejected the application.

6. In support of his contentions, learned Senior Counsel for the applicant placed reliance on the decision of the Hon'ble Apex Court in the case of **Sheila Sebastian vs. R.Jawaharaj and anr, reported in (2018)7 SCC 581**. He submitted that the definition of "false documents" is part of definition of "forgery". "Forgery" and "fraud" are essentially matters of evidence and in the present case, there is no evidence as to the "forgery" of the documents by the applicant and thus there is no material to show

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involvement of the applicant in the commission of the crime.

7. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application and submitted that even strongest suspicion is sufficient to frame a charge against the accused. At this stage, the court has to see whether there is a material to substantiate the charge and it is not necessary to see whether the material is sufficient to result into the conviction. Whenever involvement of the applicant in forgery is a matter of evidence, it could be proved during the trial. At this stage, statements of witnesses sufficiently show involvement of the applicant in the alleged offence. In view of that, both the courts below rightly rejected the applications.

8. Before entering into the evidence and before ascertaining whether the material collected by the

prosecution is sufficient to frame charge, it is necessary to see considerations for considering the application for discharge.

9. It is a settled principle of law that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

10. The Hon'ble Apex Court in the case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao, reported in MANU/SC/1113 2023**, adverting to the earlier propositions of law in its earlier decisions in the cases of **State of Tamil Nadu vs. N.Suresh Rajan and ors, reported in (2014) 11 SCC 709** and **The State of Maharashtra vs.**

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Som Nath Thapa, reported in (1996) 4 SCC 659 and The State of MP Vs. Mohan Lal Soni, reported in (2000) 6 SCC 338, has held as under:

“10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in **State of Tamil Nadu vs. N.Suresh Rajan and ors, (2014) 11 SCC 709** adverting to the earlier propositions of law laid down on this subject has held:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the

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prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an 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. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out.

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To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

11. Thus, the defence of the accused is not to be looked into at this stage when the application is filed for discharge. The expression "the record of the case" used in Section 227 of the Code of Criminal Procedure is to be understood as the documents and materials, if any, produced by the prosecution. The provisions of the Code of Criminal Procedure does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating

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agency. The primary consideration at the stage of framing of charge is the test of existence of a *prima facie* case, and at this stage, the probative value of materials on record need not be gone into. At the stage of entertaining the application for discharge under Section 227 of the Code of Criminal Procedure, the court cannot analyze or direct the evidence of the prosecution and defence or the points or possible cross examination of the defence. The case of the prosecution is to be accepted as it is.

12. In the case of **Union of India vs. Prafulla Kumar Samal and anr, reported in (1973)3 SCC 4**, the Hon'ble Apex Court considered the scope of Section 227 of the Code of Criminal Procedure. After adverting to the various decisions, the Hon'ble Apex Court has enumerated the following principles:

“(1) That the Judge while considering the question of framing the charges under section 227 of the

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Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act

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merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

13. Thus, the catena of decisions explains the scope of Sections 227 and 228 of the Code of Criminal Procedure.

14. With the above principles, if the material in the present case collected during the investigation is discussed, there is no dispute as to the fact that the present applicant is the President of “The Young Engineers Education Society, Kurkheda, district Chandrapur.” In the year 2015, the above Society was intending to start an Engineering College and said Raghuvir Somaji Bawankule was assigned to complete all formalities for preparing

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proposal to start the College. Said Raghuvir Somaji Bawankule did all formalities and the applicant submitted the proposal. On evaluation of the investigation papers, it reveals that various documents like NA Order, the certificate issued by the Tahsildar mentioning Revenue Case No.MRC 34/68 dated 27.2.2015 and Revenue Case No.MRC 34/72 dated 27.2.2015 were found to be forged. The signature and seal on the said papers were also found to be forged. Even, 7/12 extract of gat Nos.446, 448, and 402 signed by the Talathi whereat the signatures of talathi were found to be forged. The statements of Umesh Kale, SDO of Bramhapuri and Raghuvir Somaji Bawankule show participation of the applicant. The other office bearers namely Laxmi Waghmare, Manoj Udupure, Dilip Lanjewar, and Vijay Udupure all have stated that in the meeting held in October 2014 Resolution was passed authorizing the applicant to prepare the proposal and

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collect the documents to start the Engineering College. The statement of Rahulkumar Hadge also shows that it was the applicant who approached him and introduced Raghuvir Somaji Bawankule and informed him that said Raghuvir Somaji Bawankule would give him all information. The statements of the Talathi and Tahsildar also show that they have not signed the said documents.

15. Thus, as far as the involvement of the applicant is concerned, there is a sufficient material to show that there may be involvement of the applicant in the alleged incident.

16. In **Sheila Sebastian** *supra*, relied by learned Senior Counsel for the applicant, the Hon'ble Apex Court by interpreting the provisions under Sections 464 and 465 of the IPC held that, "a close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the

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same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463, IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery.”

It is further held that, “keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same,

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otherwise the accused person is not liable for the offence of forgery.”

In paragraph No.26 it is further held that, “the definition of “false document” is a part of the definition of “forgery”. Both must be read together. ‘Forgery’ and ‘Fraud’ are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts.”

17. Thus, in view of the above observations, in the present case also, whether involvement of the applicant is in the forgery or not is a matter of evidence which could be proved as a fact by direct evidence or by inference drawn by proved facts.

18. Thus, whether the involvement of the applicant is in the forgery of documents or not is a matter of evidence.

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19. After having sifted weigh through the evidence on record and gone through the investigation papers and considering the materials on record, it is difficult to hold that inference of grave suspicion can be raised against the applicant on the basis of the evidence on record. The material appears to be insufficient for subjecting the applicant to trial. On the basis of the evidence on record, it cannot be stated that the material is sufficient for the prosecution to establish the charge against the applicant. Subjecting the applicant to trial on the basis of the above said evidence would not only be a mere formality but also abuse of process of law. Learned Sessions Judge ought to have appreciated this position while deciding the application for discharge. The material collected by the prosecution is sufficient to establish the case of the prosecution and, therefore, order passed by learned Sessions Judge calls for no interference.

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20. In this view of the matter, the application deserves to be rejected and the same is **rejected**.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!