



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

CRIMINAL WRIT PETITION NO. 319/2025

1. Jain Real Estate Builders
through its Partner Sunil Inderchand
Banthia, aged 66 yrs., Occ. Business,
having office at G-42, 'Utkarsh Nirman'
Mangalwari, Sadar, Nagpur.

...PETITIONER

VERSUS

1. Parag Prakash Banthia,
aged 43 yrs., Occ. Business,
2. Smt. Usha w/o Prakash Banthia,
aged 75 yrs., Occ. Household,
Parag Prakash Banthia and Usha
Prakash Banthia Plot No. 201,
Ramdeo Arsie, near Airport Center
Point Hotel, Somalwada, Wardha Road,
Nagpur-440025.
**[Amendment carried out as per order
dated 06.08.2025.]**
3. The State of Maharashtra through
Police Station In-charge, Sadar Police
Station, Nagpur.

...RESPONDENTS

Mr. R.S. Parsodkar, Advocate for petitioner.
Mr. R.D. Dharmadhikari, Advocate for respondent Nos. 1 & 2.
Mr. A. M. Joshi, Addl. Public Prosecutor for respondent No.3.

CORAM : M. M. NERLIKAR, J.

DATE : 11.11.2025

ORAL JUDGMENT :

Heard.

2. By way of this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the judgment and order dated 14.08.2024 passed by the Additional Sessions Judge, Nagpur in Criminal Revision No.226/2023 and the order dated 20.07.2023 passed by the learned Judicial Magistrate First Class Court No.6, Nagpur in Criminal Misc. Application No. 1600/2023, wherein the complaint filed by the petitioner under Section 156(3) of the Code of Criminal Procedure ("Code") was dismissed.

3. Brief facts of the case appears to be:-

The petitioner is a partnership firm dealing in the business of real estate and construction through its partner. The respondent No. 1 is cousin brother of the partner whereas respondent no. 2 is the mother of respondent no. 1.

The respondent no. 2 owned and possessed agricultural land admeasuring about 0.64 hectares situated at Khasra no. 177/2 Patwari Halka No. 74, Mouza Borkhedi, Gram Panchayat Borkhedi which was agreed to be sold to petitioner-firm vide agreement for sale dated 06.09.2004 for a consideration of Rs. 16,00,000/-. Subsequently, the entire consideration has been paid by the petitioner-firm. Thereafter, the respondent no. 2 executed power of attorney in favour of petitioner-firm on 27.01.2005 before Sub-Registrar, Nagpur. However, the petitioner-firm through its partner received a legal notice dated 25.08.2015 issued by respondent no. 1 stating that respondent no. 2 has revoked the aforesaid power of attorney in view of gift deed executed by respondent no. 2 in favour of respondent no. 1 to which the petitioner-firm replied on 07.10.2015. Pursuant to the same, the petitioner-firm challenging the gift deed filed a Civil Suit bearing RCS No. 1285/2015 which was eventually dismissed. As the petitioner-Firm was having business in real estate and construction it had

sold bungalows on the said plot to prospective buyers on receipt of payment by executing deed of conveyance.

In view of above facts, the petitioner-Firm filed a police complaint in Sadar Police Station, Nagpur on 24.10.2015 complaining of cheating and fraud, however, the police authorities refused to take action. Therefore, a criminal complaint under section 156(3) r/w section 199 and 200 Code was filed before the Trial Court seeking directions to register FIR against respondent Nos. 1 and 2 under sections 405, 406, 417, 418, 419 and 420 r/w section 34 of IPC. However, vide order dated 20.07.2023 the Magistrate dismissed the complaint in Criminal Misc. Application No. 1600/2023 which was challenged in Criminal Revision No. 226/2023 before the Sessions Judge which was also dismissed vide order dated 14.08.2024. The aforesaid orders are challenged in the petition.

4. The learned counsel for the petitioner submits that the learned Magistrate and the Revisional Court has miserably failed to take into consideration that mere non-filing of an affidavit in support of the complaint is not fatal as it is a

curable defect. He submits that before passing of the order of dismissal by the Magistrate, the Magistrate ought to have permitted the petitioner to file affidavit, however by not permitting the same, the Magistrate has failed to apply the principles of natural justice which amounts to denying the petitioner from filing of an affidavit. He submits that the Magistrate ought to have considered the solemn affirmation which appears at the foot of the application as the contents of the solemn affirmation is nothing but is a form of an affidavit itself and the solemn affirmation itself depicts that the contents in the application are true and correct to the best of the knowledge and belief, therefore there is nothing new to be stated on affidavit separately. He submits that the allegations, if considered from the contents of the application, the ingredients of cheating and other offences are made out, therefore the Court ought to have considered that there are sufficient allegations to issue directions under Section 156(3) of the Code. Lastly, he submits that merely if there is civil remedy cannot bar criminal complaint.

5. On the other hand, the learned counsel for the respondents submits that the civil dispute was converted into a criminal case. The respondent No.1 who is also a partner in the Partnership Firm is cousin brother. The respondent No.2 who is the mother of respondent No.1 owned and possessed agricultural land admeasuring about 0.64 Hectares. It was agreed to be sold to the petitioner-Firm vide agreement for sale dated 06.09.2004 for a consideration of Rs.16,00,000/-. He submits that there is no dispute that the consideration amount has been paid by the petitioner-Firm. Accordingly, respondent No.2 – mother has also executed registered power of attorney in favour of the petitioner-Firm, however in the meantime, respondent No.2 executed gift-deed in favour of respondent No.1. He submits that legal notice was issued on 25.08.2015 informing that respondent No.2 has revoked the power of attorney in view of execution of gift-deed. He submits that accordingly, the petitioner-Firm filed a Civil Suit which was dismissed. The petitioner-Firm has constructed Bungalows on the said plot, which were sold to the prospective buyers on

receipt of payment by executing deed of conveyance, therefore he submits that the dispute is of civil nature. Even if the contents of the application is taken as it is, no criminal element is involved. He submits that the Hon'ble Supreme Court in case of *Priyanka Srivastava and another Vs. State of Uttar Pradesh and others, (2015) 6 SCC 287* made it mandatory to file affidavit in support of the application filed under Section 156(3) of the Code. This is not a curable defect. Further, the issue dealing with filing of the affidavit and solemn affirmation as affidavit has been dealt by this Court in *Harry Inder Dhaul Vs. State of Maharashtra and others with connected petitions, 2023 SCC OnLine Bom 200*. Lastly, he submits that there are concurrent findings of both the Courts and therefore, prayed to dismiss the petition.

6. Upon hearing the learned counsel for the petitioner and learned APP, it is not in dispute that the petitioner has filed the Criminal Misc. Application No. 1600/2023 seeking direction under Section 156(3) of the Code for registration of offence.

Admittedly, the said application was not supported by the affidavit.

7. The Supreme Court in Priyanka Srivastava (*supra*) has made following observations in paragraph Nos. 30 and 31 which read as under:-

“30. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Section 154(1) and 154(3)

while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

8. This Court in case of Harry Inder Dhaul (*supra*) observed in paragraph Nos. 13, 14, 15, 16 and 17 which read as under:-

“13. Let us see whether in the present case, the application/complaint lodged by respondent no. 2 satisfies the compliance referred in cases of Priyanka Srivastava and Sayed Anwar Ahmed (supra).

14. A perusal of the application under section 153(3) of the Cr.PC. shows that at the foot of the application solemn affirmation is done by the authorized person of respondent no.2. The solemn affirmation appearing at the foot of the application is reproduced here as under:

SOLEMN AFFIRMATION

I Shripad Prakashrao Moharil, Age – 45 years, resident of Nagpur, do hereby take oath and state on solemn affirmation that the content of above paragraphs no. 1 to 14 have been drafted by my counsel – Adv. Prakash N. Rawlani as per my instructions. That it has been explained to me in my vernacular language, they are true and correct to best of my knowledge and belief.

Hence verified and signed here at Nagpur on this 2nd Day of August 2021.

15. Though, the application is supported by an affidavit in the form of solemn affirmation referred above, but, it does not substantially comply with the requirements set out in paragraph nos. 5 and 8 of chapter VII of the Criminal Manual as directed in the case of Sayed Anwar Ahmed (supra). The paragraph

5 and 8 of Chapter VII of the Criminal Manual are reproduced below:

“5.(1)Every affidavit should clearly specify what portion of the statement is made on the declarant’s knowledge and what portion of the statement is made on his information or belief.

(2) When a particular portion is not within the declarant's own knowledge but it is stated from information obtained from others, the declarant must use the expression “I am informed” and if it is made on belief should add “I verily believe it to be true.” He must also state the source or ground of the information or belief, and give the name and address of, and sufficiently describe for the purpose of identification, the person or persons from whom he had received such information.

(3) When the statement rests on facts disclosed in documents or copies of documents procured from any court or other person, the declarant shall state the source from which they were procured and his information, or belief, as to the truth of the facts disclosed in such documents.

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8. (1) The Officer authorised in this behalf, shall, before administering the oath ask the declarant if he has read the affidavit and understood the contents thereof, and if the latter states that he has not read it, or appears not to understand fully, the contents thereof, or appears to be blind, illiterate or ignorant of the language in which it is written, the Officer administering the oath shall read and explain or cause some other competent person to read and explain in his presence the affidavit to the declarant in the language which both the declarant and the Officer administering the oath understood.

(2) When an affidavit is read, translated or explained as herein provided the Officer administering the oath shall certify in writing at the foot of the affidavit that it has been so read, translated or explained in his presence and that the declarant understood the same at the time of making the affidavit and made his signature or finger impression in the presence of the Officer.”

16. In the present case, only at the foot of the complaint, paragraph in the form of solemn affirmation has been made without mentioning what

portion of the statement in the application/complaint is made on the personal knowledge of the declarant and what portion of the statement in the application/complaint is made by him on the basis of information and belief. The reasons, for the information and belief. The reasons, for the compliance of these requirements strictly is very obvious as held in Priyanka Srivastava (supra) i.e. to see that the complaint who invokes the jurisdiction under section 156(3) of the Cr.P.C. and put the criminal law in motion, shall be held responsible for any mischief in making out a false case. There should be no scope for the declarant to escape on the technical ground from responsibility attached to the statement made by him in the affidavit. Unless those compliances, referred in paragraph nos. 5 and 8 of chapter VII of the Criminal Manual are complied with, it will be difficult to hold the person making a declaration on oath, responsible for the statement made on an oath.

17. An affidavit filed without complying with the requirement of Chapter VII of Criminal Manual published by this court, cannot be said to be an affidavit filed in compliance with the direction issued by the apex court in Priyanka Shrivasta and Sayad Anwar Ahmad. Thus, we hold that in present case, there is non-compliance of mandatory requirement i.e. filing of the proper affidavit.”

9. It would also be useful to refer to the latest judgment of the Supreme Court in case of ***S.V. Vijayalakshmi & ors. Vs. State of Karnataka in Special Leave Petition (Criminal) No. 8626/2024 delivered on 31.07.2025***, wherein the Supreme Court has observed in paragraph No.45 which reads as under:-

“45. The High Court has taken a view that this is a curable defect since before the referral order on the PCR by the ACMM for registering an FIR under Section 156(3) of the CrPC, the required formalities were done. In our considered opinion, this approach cannot be labelled erroneous. The requirement under Priyanka Srivastava (supra) is to safeguard the rights of the citizenry and to put a stop to unjust criminal action and filing of vexatious applications to settle personal scores. Thus, such requirement could not be said to be a mere formality. One of us (Sudhanshu Dhulia, J.) as a Single Judge of the Uttarakhand High Court, in Sachin Chamoli v State of Uttarakhand, 2016 (3) NCC 68, where no affidavit had been filed, held that filing of affidavit was a mandatory requirement as per Priyanka Srivastava (supra). In Babu Venkatesh v State of Karnataka, (2022) 5 SCC 639, this Court held that the Magistrate concerned should not have entertained the complaint/application under Section 156(3) of the CrPC therein, as it was not supported by an affidavit. In the case at hand, before the ACMM passed the

referral order, the complaint was backed by an affidavit. In Ramesh Kumar Bung v State of Telangana, 2024 SCC OnLine SC 264, the Court, while stating that the directions in Priyanka Srivastava (supra) are mandatory, declined to interfere with the order(s) impugned therein, but noted that the informant had filed the affidavit belatedly. To complete the discussion on this aspect of the law, we may also refer to our judgment in Kanishk Sinha v State of West Bengal, 2025 SCC OnLine SC 443 where, speaking through Sudhanshu Dhulia, J., this Court upheld an order of the Calcutta High Court, to the effect that the direction in Priyanka Srivastava (supra) to file the affidavit, was prospective in nature. Therefore, if after the filing of the complaint/application but before any order thereon is passed, such requirement is allowed to be fulfilled/complied with by the complainant, it would not, in our view, run counter to the law exposited in Priyanka Srivastava (supra). We sum up our conclusions on this score as follows: (i) Directions issued in Priyanka Srivastava (supra) are mandatory; (ii) Guidelines laid down in Priyanka Srivastava (supra) operate prospectively; (iii) Non-filing of the supporting affidavit is a curable defect, but must be cured before the Magistrate passes any substantive order on the complaint/application, and; (iv) If the Magistrate proceeds without the requisite affidavit, such order/any consequential orders/proceedings can

be quashed on the sole ground of non-compliance with Priyanka Srivastava (supra)."

10. From the above, it is crystal clear that affidavit in support of the application filed under Section 156(3) of the Code is mandatory. It is further to be noted that though at the end, solemn affirmation in the nature of affidavit is appearing, but that by itself would not be sufficient in order to comply the requirements set out in Chapter VII of the Criminal Manual in paragraph Nos. 5 and 8, therefore this issue is no more res-integra considering the above law laid down by the Supreme Court as well as this Court referred (*supra*).

11. It is true that the defect of non-filing of affidavit is curable, the Supreme Court in the case of S.V. Vijayalakshmi (*supra*) has specifically observed that the direction in case of Priyanka Srivastava is mandatory, however, an exception to this has been carved out by the Supreme Court by stating that the requirement of filing of an affidavit is allowed to be fulfilled/complied with by the complainant after filing of the complaint, but before the Magistrate passes any substantive

order on complaint/application, meaning thereby the Supreme Court categorically has held that after filing of the complaint/application and before passing of order on the said application, the affidavit can be filed in order to comply the direction in the case of Priyanka Srivastava (*supra*). If the party fails to do so, then naturally the complaint would be dismissed.

12. If the present petition is considered, it is apparent that only the solemn affirmation appears at the foot of the application, and no affidavit has been filed. The purpose behind filing of the said affidavit is already explained by the Supreme Court in case of Priyanka Srivastava (*supra*). Therefore, without elaborating further, the fact remains that the petitioner has failed to file the affidavit in support of his application before passing the order of dismissal.

13. That apart ever the contention of the learned counsel for the petitioner that ingredients of Sections 405, 406, 417, 418, 419, 420 read with Section 34 of the Indian Penal Code are made out, cannot be accepted as could be gathered from

the contents of the application which demonstrate that the dispute is of civil nature. The execution of power of attorney in favour of the Partnership Firm by respondent No.2 was revoked by issuing a legal notice dated 25.08.2015, wherein respondent No.2 has executed gift deed in favour of respondent No.1. This by itself would not satisfy the ingredients of alleged offence. Further, the suit filed by the petitioner-Firm bearing RCS No. 1285/2015 was also dismissed. It appears from the application that the case revolves around power of attorney and revocation of said power of attorney in view of gift deed, therefore appropriate remedy was not of filing criminal complaint. It could be at the most regarded as breach of contract between the Partnership Firm and respondent No.2. It is well settled that mere breach of contract cannot give rise to criminal prosecution for cheating and criminal breach of trust.

14. Considering the above facts and circumstances of the case, both the Courts have rightly held that the petitioner has failed to file affidavit in support of the application which is mandatory compliance of directions issued in case of Priyanka

Srivastava (*supra*) and further held that the dispute is of civil nature,as the agreement between the parties is in respect of property and any breach thereon amounts to breach of contract, therefore both the Courts have rightly dismissed the complaint of the petitioner.

15. In view of the above, writ petition stands dismissed and disposed of accordingly.

(M. M. NERLIKAR , J.)

Gohane