



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

Criminal Application (APL) No. 493 of 2019

Omprakash S/o Govindram Saraf and others

Versus

State of Maharashtra through Police Station Officer, Ramnagar, Wardha
Tq and District Wardha

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri C.S.Dharmadhikari, Advocate for the applicant.

Shri A.R.Chutke, APP for the non-applicant/State.

None for the non-applicant no.2.

**CORAM : ANIL S. KILOR &
PRAVIN S. PATIL, JJ.**

DATED : 23rd APRIL, 2025.

Heard learned counsel for the applicants and learned
Additional Public Prosecutor for the non-applicant no.1/State. None for
the non-applicant no.2 despite the fact that most opportunities were
granted.

2. The applicants have been charge-sheeted vide Charge-Sheet
No. 82 of 2024 dated 24th July, 2024 for the offence punishable under

Sections 120B, 199, 200, 420, 465, 467, 468, 471 read with Section 34 of Indian Penal Code.

3. The allegations made in the report are that though the applicant no.1 had no authority or they were not trustees of the Trust namely 'Agresen Bhavan Trust', he applied for carrying out a mutation entry of the land in question in the name of 'Agresen Bhavan Trust', in view of the registered sale-deed dated 28th June, 1988 and the authorities acted upon the said application without considering whether the applicant no.1 had any authority to apply for such mutation, recorded the mutation in the name of 'Agresen Bhavan Trust'.

4. Having gone through the entire charge-sheet, it is evident that there is a dispute between two groups in 'Agresen Bhavan Trust'. The applicants belongs to one group whereas, the complainant to other group.

5. It is further evident that complainant is not disputing the sale-deed dated 28th June, 1988 executed by Digambar Jain Boarding House, Wardha in favour of 'Agresen Bhavan Trust'. The complainant is also not disputing that the mutation entry was recorded in the name of 'Agresen Bhavan Trust'.

6. No doubt in the disputed mutation entry below the name of 'Agresen Bhavan Trust', the name of Shri Omprakash Saraf and Shri Wasudeo Saraf were recorded as trustees.

7. It is further an admitted fact that this mutation entry No. 8398 was recorded on 15th June, 2007, whereas the First Information Report came to be lodged on 24th January, 2019 i.e. after about 12 years.

8. The record further shows on the relevant date when Shri Omprakash Sharaf and Shri Wasudeo Sharaf made an application for recording the name of 'Agresen Bhavan Trust' in the revenue record, they were trustees and their change report was pending. After the recording of disputed mutation entry, the change report of the above referred trustees was rejected and it was maintained in the appeal too. Thus, the rejection of change report of the applicant no.1 gave the cause to other group of the Trust to lodge the report.

9. It is not the case of complainant that 'Agresen Bhavan Trust' is not the owner and despite the mutation entry has been recorded in the name of said Trust.

10. In the above referred backdrop when there is no dispute that mutation entry was recorded in the right name i.e. 'Agresen Bhavan

Trust', in view of the sale-deed dated 28th June, 1988, it cannot be said that offence under Section 420 of Indian Penal Code was committed by the applicants.

11. Furthermore recording of names Shri Omprakash Saraf and Wasudeo Saraf as the Trustee of the said Trust will also not attract any offence as alleged, for the reason as recorded hereinabove that on the relevant date, they were trustee and change report was pending.

12. Moreover, mutation entry was not recorded in the name of applicant no.1 and Shri Wasudeo Saraf as owner, but their names were recorded below the name of owner i.e. 'Agresen Bhavan Trust' as trustees. If any error was found by the complainant in recording the name of Shri Omprakash Saraf and Wasudeo Saraf as trustee, the remedies are there to correct the mutation entry. However, there is no criminal element present in the instant matter.

13. Thus, it is evident that the complaint is fictitious and filed with an oblique motive by civil matter painting as criminal.

14. Furthermore, the allegations as regards misappropriation of fund is concerned, there is no evidence to that effect. It is apparent on

the face of record that such allegations have been made because of fraction in the Trust.

15. In the circumstances, the charge-sheet in question is nothing but an abuse of process of law and therefore it cannot be allowed to continue.

16. In that view of the matter, the application deserves to be allowed, though learned Additional Public Prosecutor strongly opposed the application. Accordingly, we proceed to pass the following order.

- i. Criminal Application is allowed;
- ii. Charge-Sheet No. 82 of 2024 dated 24th July, 2024 arising out of First Information Report vide Crime No. 0056 of 2019 dated 24th January, 2019 for the offence punishable under Sections 120B, 199, 200, 420, 465, 467, 468, 471 read with Section 34 of Indian Penal Code is hereby quashed and set aside against the applicant no.1 - **Omprakash S/o Govindram Saraf**, applicant no.2 - **Indrakumar S/o Balmukund Saraf** and applicant no.3 – **Shrikant S/o Balkishan Bajaj**.

[PRAVIN S. PATIL, J.]

[ANIL S. KILOR, J.]