



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

CRIMINAL WRIT PETITION NO. 898 OF 2024

PETITIONER

Naresh @ Chhotu Wasudeo Thakre,
Aged about 51 Years, Occu: Agriculturist,
R/o 84-B, Pandey Layout, Khamla Road,
Nagpur.

VERSUS

RESPONDENT

State of Maharashtra,
through Police Station Officer,
Police Station Sadar, Nagpur,
District Nagpur.

Mr. Naresh M. Kolhe, counsel for petitioner.
Mrs. Sneha S.Dhote, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 26/06/2025

JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith with consent of learned counsels appearing for the parties.
3. By this writ petition, the petitioner has challenged the

order passed by the Additional Sessions Judge-6, Nagpur in Criminal Revision Application No. 88/2016, by which the order passed by the Chief Judicial Magistrate, Nagpur discharging the present accused is quashed and set aside.

4. The brief facts which are necessary for the disposal of the said writ petition are as under :

The crime is registered against the present petitioner and other co-accused under Sections 409, 420, 468, 471, and 120-B read with Section 34 of the Indian Penal Code, 1860. On 06/06/2023, Smt. Vijaya Bankar, Tahsildar, Nagpur City, lodged an FIR against the present respondent, who is the accused No. 4, and other accused with the Police Station, Sadar, alleging that they hatched the conspiracy with each other, and in pursuance of the said conspiracy, the land bearing Survey Nos. 47/2 and 109/(3) in Ajani, Survey Nos. 97/2, 84, 85, and 86/2 in the village of Khamla, and Survey No. 302/3 in the village of Lendra belonged to the Government Land and Raje Bhonsale. In collusion with the other co-accused, who were working as Tahsildar and Talathi in the Tahsil Office Hingna, and Nagpur, he got his name mutated in the record of rights of those lands by showing he is a legal heir of

Arjun Aswale and Sakharam Thakre based on the forged documents, and they sold the lands bearing Nos. 56 and 109/3 to accused Nos. 8 and 9 for valuable considerations. On the basis of the said report, the crime was registered vide Crime No. 156/2003 for the offence punishable under Sections 409, 420, 468 and 471 read with Section 34 of IPC.

5. After completion of the investigation, the investigating officer filed a charge-sheet against all the accused, and the applicant has filed an application for discharge vide Exhibit-85 under section 239 of Cr.P.C. The learned Chief Judicial Magistrate, Nagpur, vide impugned order dated 23/12/2015, discharged the accused No.4 i.e. the present petitioner, under Section 439 of Cr.P.C. from the offences punishable under Sections 120-B, 409, 420, 468 and 471 read with Section 34 of the Indian Penal Code.

6. The said order was challenged by the State before the Sessions Judge by preferring a Criminal Revision Application No. 88/2016, was considered by the Sessions Judge, and quashed and set aside the order passed by the Sessions Judge.

7. Being aggrieved with the order passed by the Sessions Judge, the present writ petition is preferred by the petitioner on the ground that the learned Sessions Judge has committed an error while quashing and setting aside the order. The Will was executed in favour of the present petitioner, and the civil court has appreciated the genuineness of the Will and passed an order in favour of the present petitioner. Therefore, no offence is made out against the present petitioner, and the learned Chief Judicial Magistrate has rightly allowed the application. However, the Sessions Judge has committed the error.

8. Heard learned counsel for the petitioner, who submitted that the entire investigation papers nowhere reveals that the present petitioner is involved either in committing forgery or using the said documents as genuine documents and thereby cheating the government. Therefore, the order passed by the Sessions Judge while allowing the revision application is erroneous.

9. Per contra, the learned APP strongly opposed the same and submitted that the revenue record shows that lands bearing Survey nos. 47/2 and 109/3 in the village of Khamala

belong to the government, but those lands were later on shown in the name of Arjun Aswale. The Mutation Entry No. 222 shows on the Will dated 10/09/1981, the name of the present petitioner was entered in the record of rights of those lands by showing him as a son of the daughter of Arun Aswale. However, it has been further mentioned in the said mutation entry that the said Arjun Aswale did not have any son or daughter. So, a question arises as to how the respondent's name came to be recorded as a grandson of Arjun Aswale. She also invited my attention towards the various statements of the witnesses who are the government servants and submitted that even the sub-divisional officer has cancelled the mutation entry, and the said order was not challenged by the present petitioner.

10. She further invited my attention towards the legal aspect that, at the time of framing of charge, the Court is not expected to do the roving inquiry; what is to be seen is whether a prima-facie material is available to frame the charge, and it is not to be seen whether the material available is sufficient for warrant the conviction or not. Thus, at this stage, prima-facie material is to be looked into, which is available to frame the charge, and

therefore, the order passed by the Sessions Judge deserves to be maintained.

11. Before entering into the merits of the cases, it is necessary to see what are the considerations for considering the application for discharge.

12. 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.

13. 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.

14. The Hon'ble Apex Court in the case of *State of*

Gujarat vs. Dilipsinh Kishorsinh Rao, reported in MANU/SC/1113 2023, advertng 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. 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 advertng 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 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. 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."

15. 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 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.

16. 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 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 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.”

17. In the light of the above principles, if the facts of the present case are taken into consideration, it reveals that the revenue record shows that initially the land bearing survey Nos. 47/2 and 109/3 in the village of Khamla was shown to be in the name of the government. Subsequently, the lands were shown in the name of one Arjun Aswale. The mutation entry No. 222 shows that based on the Will dated 10/09/1981, the name of the present petitioner was entered in the record of rights of those by showing the ancestral of the daughter of Arun Aswale. However, in the said mutation entry, it is further clarified that said Arjun Aswale did not have any son or daughter. So, the entry appears to be doubtful.

18. From the record, it is further clear that in the affidavit dated 30/12/2020 filed by the present petitioner before the Executive Magistrate, the word “Grand Father” (आजोबा) was inserted by scoring the word “Father” (वडील) before the name Arjun Laxmanrao Aswale. Besides that, there is overwriting on the date of the death and survey number. The word mentioned that present petitioner is the only grandson who appears to be introduced in

the said affidavit later on. The record further shows that on 01/01/2001, the petitioner submitted an application for mutation in his name in the record of rights of the lands standing in the name of Arjun Aswale, and on the same day, the co-accused sanctioned the mutation entry No. 222 in his favour without conducting any inquiry. Thus, from the record, prima-facie it appears that the Sub-Divisional Officer, by order dated 21/04/2003, cancelled the mutation entry recorded in favour of the present petitioner, which has remained unchallenged.

19. From the revenue record, it prima-facie appears that lands bearing Survey Nos. 84, 85, and 86 in the village of Khamla belong to Raje Fatehsingh, Raje Raghuji Rao, Raje Janoji Rao, Raje Jaisingh Rao, and Annapurna Raghuji Rao Bhonsale, but on the application of the petitioner, his name came to be entered into the record of rights of those lands vide mutation entry No. 228 based on the Will dated 12/12/1980 by showing him as the grandson of Sakhasram Harbaji Thakre. In mutation entry no. 228, it was mentioned that the said Sakhasram Thakre did not have any son or daughter. Thus, doubt is created as to in what manner the present petitioner is the grandson of the said Sakhasram Thakre. So, a

question arises as to how the petitioner's name came to be mutated as the grandson, i.e., son's son, of Sakharam Thakre. In the petition also, the present petitioner has not pointed out how he became the grandson of the said Sakharam Thakre.

20. From the statements of the various witnesses also, the involvement of the present petitioner is revealed in the said forgery as well as in the preparation of the document. The statement of one Pravin Pohokar, prima-facie shows that in the year 1995-96, the petitioner had given a contract for constructing a Police Chowky for security guards. It further shows that in the year 2000, the petitioner obtained his signature on two typed stamp papers in his house by threatening him that if he did not put his signature on those stamp papers, he would not give him money due to him. He further stated that, in the year 1980-81, he had not signed any Will. He further stated that he is not aware whether any Sakharam Thakre is in existence or whether he has executed any Will in his presence. The statement of Pravin Pohokar thus prima-facie shows that and raises a doubt about the genuineness of the said Will.

21. The statement of another witness, who is working as a Talathi in the Tahsildar Office, Nagpur, prima-facie reveals that in the audit of the land records, it was disclosed that the names of the private persons were found recorded in the record of rights of some government lands.

22. The statement of another witness, Sandip Shastri, and the valuation report dated 25/09/2001 given by him prima-facie shows that the other accused had applied for a loan from the Yavatmal Urban Cooperative Bank, Branch Deonagar, by mortgaging the land bearing survey No. 56 in Ajni, but during the search report, the title of that land, by verifying the record of the City Survey and Tahsil Office, Nagpur, was found that said land belongs to the Government. Thus, after going through the entire record, prima-facie material shows the involvement of the present petitioner in the said crime. As observed earlier, at the stage of framing of charge, whether prima-facie material is sufficient or not is to be seen.

23. After having sifted through the evidence on record and gone through the investigation papers and considering the materials on record, it is difficult to hold that the petitioner is not

involved in the said crime. On the contrary, the material, which is documents in nature, and the order passed by the Sub-Divisional Officer canceling the mutation entry no. 222 sufficiently shows that fraud is committed as to the government land. On the basis of the evidence on record, it cannot be stated that the material is not sufficient for the prosecution to establish the charge against the accused. Subjecting the applicant to trial on the basis of the said evidence to ascertain whether forgery is committed or not. Thus, at this stage, prima-facie material is sufficient to frame the charge against the present petitioner; therefore, no interference is called for.

In view of the above facts and circumstances of the case, the writ petition being devoid of merits and liable to be dismissed. Accordingly, I proceed to pass the following order.

- a] The writ petition is **dismissed**.
- b] Rule stands discharged with no order as to costs.

[URMILA JOSHI-PHALKE, J.]