



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

CRIMINAL APPLICATION (APL) NO. 1149 OF 2024

[Rajesh Ashok Dawda **vs.** State of Maharashtra, through the
P.S.O., P.S. Sonegaon, Nagpur and anr.]

with

CRIMINAL APPLICATION (APL) NO. 1094 OF 2024

[Dr. Mahesh S/o. Chandumal Fulwani and anr. **vs.** State of Maharashtra, through
P.S.O., Sonegaon P.S., Nagpur City, Nagpur and anr.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Nikhil Dawda, Advocate for the applicant in APL 1149/2024
Mr. Firdos Mirza, Senior Counsel a/b Ms. Shaad Mirza, Advocate for
applicants in APL 1094/2024
Mr. S. S. Doifode, APP for the State/non-applicant no. 1
Mr. R. D. Bhuihar, Advocate for non-applicant no. 2

CORAM: ANIL L. PANSARE AND
M. M. NERLIKAR, JJ.

DATED : 21-08-2025.

Heard learned counsel for the parties.

2. The applicants in both the applications have prayed for quashing First Information Report (FIR) registered vide Crime No. 0113/2024 with Sonegaon Police Station, Nagpur for offence punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code, 1860 (IPC).

3. The applicant in Criminal Application No. 1149/2024 is one of the Directors of Kanchanganga Realtors Pvt. Ltd. The company had, in the year 2011, purchased land admeasuring 3191 sq. mts. bearing Khasra No. 33-35-1, P.S.K. 44, City Survey No. 494 and Sheet No. 673/9 situated at Mouza Somalwada, Nagpur. According to the applicant, in the year 2015, he entered into memorandum of understanding (MOU) with non-applicant no. 2. Non-applicant no. 2 was supposed to pay Rs. 7.5 Crores in compliance to MOU, but had paid only

Rs. 1.5 Crores. In October, 2016, the applicant had repaid Rs. 75 Lakhs and was willing to pay remaining amount as well. However, since non-applicant no. 2, in October, 2017, filed the suit for specific performance of contract, the remaining amount was not paid.

4. It appears that along with MOU, the applicant had also executed agreement to sell of the property under question with non-applicant no. 2, who aggrieved by non performance of the terms of contract and accordingly, filed civil suit being Special Civil Suit No. 1026/2017 for specific performance of the agreement to sell dated 4-4-2015.

5. The grievance of the non-applicant no. 2 is that while the agreement to sell was subsisting, the applicant entered into yet another agreement to sell with the applicants in Criminal Application No. 1094/2024 (who will be hereinafter referred to as 'subsequent purchasers'). This agreement was entered into in November, 2017.

6. In a suit filed by non-applicant no. 2, the subsequent purchasers are also made party defendants. The suit is still pending. Since the applicant entered into another agreement to sell with the subsequent purchasers, the non-applicant no. 2 lodged FIR saying that he had paid Rs. 7.5 Crores of which Rs. 1.5 Crores was paid through cheque and the remaining amount through cash, but has been cheated by the applicant and subsequent purchasers by executing another agreement to sell. Accordingly, the FIR was lodged on 5-8-2024 for the offences punishable under Sections 406 and 420 read with Section 34 of the IPC.

7. The argument is that neither the ingredients of Section 406 nor that of Section 420 of the IPC are spelt out, even if, the contents of FIR are accepted to be true.

8. We find substance in the aforesaid argument. To attract Section 406, which provides for criminal breach of trust, what is essential is that accused must have been entrusted with property or have dominion over the property. Thus, the property should have been entrusted viz. put in control of accused. In the present case, non-applicant no. 2 is not the owner of the property nor is it his case that he has entrusted the property under question under the control of the applicant or subsequent purchasers. Therefore, the first ingredient of Section 406 is missing. Another requirement to attract Section 406 of IPC is that the person entrusted with the property must have dishonestly used it for his own benefit or disposed it of in a way that is not permitted by the terms of the trust. In the present case, since the property was not entrusted by non-applicant no. 2 to either applicant or subsequent purchasers, there arise no question that they used it for their own benefit or disposed it of in breach of the trust. In that sense, the arguments of Mr. Firdos Mirza, learned Senior Counsel for subsequent purchasers and Mr. Nikhil Dawda for the applicant hold good.

9. So far as Section 420 of IPC is concerned, it deals with cheating and dishonestly inducing delivery of property. The essential ingredients are (1) deception of any person, (2) fraudulently or dishonestly inducing any person to deliver any property and (3) dishonest intention of the accused at the time of inducement. Here, it is nobody's case that non-applicant no. 2 was dishonestly induced to deliver the property under question. In fact, the non-applicant no. 2 has not delivered the property under question as he cannot and, therefore, there arises no question of he being induced to deliver the property.

10. Thus, neither the ingredients of Section 406 nor that of Section 420 of IPC are spelt out through FIR. In other words, even if, the contents of FIR are taken on its face value, the offence is not made out.

11. At this juncture, Mr. R. D. Bhuihar, learned counsel appearing on behalf of non-applicant no. 2 submits that the investigation is at a preliminary stage. He contends that, in the present case, even if, an offence under Section 420 of the IPC is not *prima facie* established, there exists the possibility that other offences may be disclosed during the course of investigation. He further submits that the applicant has entered into agreement to sell with subsequent purchasers notwithstanding the subsistence of agreement with non-applicant no. 2. Accordingly, he prays that the FIR should not be quashed at this stage, as the ongoing investigation might reveal the commission of other offences.

12. Learned Senior Counsel has rightly countered the argument contending that the investigation cannot be permitted to continue indefinitely, especially once the report lodged by non-applicant no. 2 was found to be making out no offence as alleged. He has then invited our attention to the pleadings in the suit filed by non-applicant no. 2. Non-applicant no. 2 has admitted that Rs. 75 Lakhs was paid by the applicant to him and accordingly, prayer is made to direct specific performance of contract by permitting non-applicant no. 2 to pay Rs. 75 Lakhs.

13. On the point of agreed consideration of Rs. 7.5 Crores, learned counsel for the applicant submits that the story put forth by non-applicant no. 2 that Rs. 1.5 Crores was paid in cheque and remaining amount paid in cash cannot be believed without any cogent evidence in support.

14. Learned counsel for the applicant further submits that the suit has been filed in the year 2017 and FIR lodged in the year 2024, which according to him, is a clear case of after thought.

15. We find substance in the contentions put forth by the counsel for the applicant and subsequent purchasers. The delay in lodging FIR coupled with the fact that the civil suit is pending for a considerable period indicates that the report so filed is something which can be said to be an attempt to convert civil dispute in criminal proceedings.

16. In view of above and considering the nature of dispute, we are of the view that the continuation of investigation and prosecution will amount to abuse of process of law. This is, thus, a fit case where inherent jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 should be invoked.

17. Accordingly, we allow the applications. FIR registered vide Crime No. 0113/2024 dated 5-8-2024 under Sections 406 and 420 read with Section 34 of the IPC with Sonegaon Police Station, Nagpur is hereby quashed and set aside.

18. We, however, make it clear that the observations made in the body of the order are for the purpose of the prayers made in the applications and the trial Court dealing with civil suit shall not get influenced by the same and will decide the suit on its own merit.

19. Criminal applications are disposed of in above terms.

(M. M. NERLIKAR, J.)

(ANIL L. PANSARE, J.)