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

CRIMINAL APPLICATION (APL) NO.1320 OF 2022

Smt. Vijayshree d/o Tarachand Vaidya,
Aged about 45 Years,
Occupation : Service,
Resident of Plot No.33,
Shantivihar Apartment,
Flat No.502, Oppo. Renuka College,
Besa Chowk, Nagpur 440034.

.... APPLICANT

// VERSUS //

1. The State of Maharashtra, through
its Police Station Officer,
Police Station, Ajni,
Tahsil and District Nagpur.
2. Shri Vishal s/o Girishrao Mude,
Aged about 43 Years,
Occupation : Business,
Resident of Plot No.27,
Maharana Colony, Abhay Nagar,
Babulkheda, Nagpur,
District Nagpur
(Police Station Ajni, Nagpur)

.... NON-APPLICANTS

Mr. P. R. Agrawal, Counsel for the applicant.
Mr. M. J. Khan, APP for non-applicant No.1/State.
Mr. Vijay Patait, Counsel for non-applicant No.2.

**CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.**

**RESERVED ON : 29 .09.2025
PRONOUNCED ON : 17.10.2025**

JUDGMENT : (PER : URMILA JOSHI-PHALKE, J.)

1. **Admit.**

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2. Heard finally with the consent of the learned Counsel of the parties.

3. Present application is preferred by the applicant for quashing of the First Information Report in connection with Crime No.274/2021 registered with Police Station, Ajni, District Nagpur for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code and consequent proceeding arising out of the same charge sheet bearing No.203/2022 pending before the learned Chief Judicial Magistrate, Nagpur.

4. The brief facts which are necessary for the disposal of the application are as under:

On 12.02.1974, the father of the applicant Tarachand had purchased four plots from Fulmati Layout bearing Nos.34, 35, 36 and 37 of Khasara No.76/2, Sheet No.73, City Survey No.4750, Ward No.14, Fulmati Layout, Mouza Babulkheda, District Nagpur. In the year 2000, Tarachand expired and after his death, the applicant and her deceased brother became the lawful owner of the said plots. On 27.06.2015, applicant and her deceased brother have executed an agreement to sale the aforesaid plots in favour of accused No.3. On 29.01.2019, the applicant and her deceased brother also executed power of attorney in respect of plot Nos.34 and 36. On 15.06.2022, the

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non-applicant No.2 Vishal Mude lodged a report stating therein that in the year 2018, he was in search of plot for construction of his house. One Sanju had shown him one plot of Fulmati Layout and therefore, he approached to one Dilip Lalaji Patil Resident of Laxminagar Nagpur. The said Dilip Patil informed him that the said plot is belonging to one Shri Tarachand Vaidya who is expired and his daughter namely applicant Smt. Vijayshree Vaidya and son Shri Harshvardhan Vaidya are legal heirs and owners of the said plot. The said Dilip Patil also informed him that the said legal heirs have executed Power of Attorney in his favour. Accordingly, he entered into a contract of purchasing the said plot for Rs.27,00,000/- with the said Dilip Patil. For the purchase of the said plot, he obtained loan from Axis Bank of Rs.18,00,000/-. On 04.12.2018 owners Vijayshree Vaidya and Harshvardhan Vaidya executed sale deed in his favour. Total expenses incurred by him towards the purchase of the said plot is Rs.32,00,000/-. During the mutation proceedings, he came to know that certain litigation is pending before the Court in respect of said plot. Upon further enquiry, he came to know that one Shri Nagdeve has filed a Civil Suit against Vijayshree Vaidya and Harshvardhan Vaidya and same is registered as RCS No.250/2014 in respect of the same plot i.e. Plot Nos.35 and 36. Therefore, the informant stated in his complaint that though the owners of the said plot were aware that a civil suit was pending

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in respect of the said plot, still they have suppressed the said fact and executed the registry in his favour. On the basis of the said report police have registered the crime against the present applicants.

5. Heard learned Counsel for the applicant, who submitted that the applicant and her deceased brother executed a Power of Attorney in respect of Plot Nos.34 and 36 in favour of one dealing party. The said Pritesh Dilip Patil and Dilip Lalji Patil claimed ownership on the said plots owned by the applicant and her deceased brother and their attempt in the civil suit and appeal came to be negated by the Civil Court. The Nagpur Improvement Trust issued RL letter in favour of the applicant and her deceased brother. The City Survey Officer also recorded the name of the applicant and her deceased brother as the owner in the record of revenue. The co-accused Shri Patil entered into an oral agreement with the non-applicant No.2 Shri Mude in respect of sale of plot No.35 and since the ownership was not conferred on the said Pritesh Patil. He requested the applicant and her deceased brother to execute tripartite registered sale deed which was accordingly executed. The entire sale proceeds was obtained by the accused No.3 Pritesh Dilip Patil. Non-applicant No.2 had obtained loan from Axis Bank and had failed to repay the same, as a result of which,

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the bank is proceeding to attach the property. The FIR was registered on the basis of complaint came to be lodged by the non-applicant No.2 complainant punishable under Section 420 read with Section 34 of the Indian Penal Code. The non-applicant No.2 has obtained the loan from Axis Bank of more than of Rs.18,00,000/- and he became the defaulter. The auction notice in the newspaper was published against the non-applicant and his wife. In the entire proceedings, it is clearly revealed that just to protect the plot No.35 from the clutches of the Axis Bank, the present complaint came to be lodged. He further submitted that the aforesaid plots 34, 35, 36 and 37 were belonging to their family, purchased from the Ramchandra Rangari, who prepared the undeveloped Layout of residential plots and offered the same for the same. Father of the applicant namely Tarachand purchased four plots, out of the said layout bearing No.34, 35, 36 and 37 vide registered sale deed dated 12.02.1974. The said Tarachand Vaidya expired on 25.02.2000 and after his death, the applicant and her brother became the owners. There was a civil litigation filed after the death of Tarachand by Jaywant Co-operative Housing Society and the legal heir of Ramchandra Rangari, containing that said properties are encroached upon by the applicant and her deceased brother. The suit bearing No.143/2000 was dismissed on 17.04.2003 and the appeal against the said judgment and

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decree bearing RCA No.276/2003 is also dismissed. Thus, the applicant and her deceased brother are held to be the lawful owners of the said plots. Their names are also entered in the revenue record maintained by the City Survey department. The RL letter issued by the Nagpur Improvement Trust on 28.09.2015 and the copy of record of rights dated 30.05.2017 shows that the applicant and her deceased brother are lawful and legal owner of the said properties. The notarized agreement was executed by the applicant and her deceased brother in favour of Pritesh Patil, who entered into an oral agreement with the non-applicant No.2 Shri Mude in respect of sale of plot No.35 only and fraudulently mentioned the plot Nos.35 and 36 in the complaint lodged with the police. The prosecution without any investigation also mentioned the plot Nos.35 and 36 in the FIR whereas, only plot No.35 was sold to the non-applicant No.2 in the year 2018 by way of registered sale deed. As there was no registered sale deed in favour of the accused No.3, the said accused No.3 requested the applicant and her deceased brother to direct execute the sale in favour of the non-applicant No.2. Accordingly, tripartite registered sale deed dated 04.12.2018 was executed. The sale deed is on record. Thus, it is evident that only plot No.35 was sold to the non-applicant No.2 and not the plot No.36. The entire transaction in respect of plot Nos.34 to 36 was already transferred to accused No.3 and only because of

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some technicalities, the applicant and her brother requested to complete the transaction. In view of that, they have completed the transaction. All these transactions are purely of a civil nature and there is nothing which can be attributed or termed as involving any event of criminal nature and therefore, no *prima facie* offence is made out against the present applicant, and therefore, the FIR registered against the present applicant deserves to be quashed and set aside.

6. Per contra, learned APP strongly opposed the said application and submitted that the plot No.35 was sold to the non-applicant No.2 by suppressing the fact as to a civil transaction and therefore, the offence is made out. The similar contention is raised by the non-applicant No.2.

7. On hearing both sides, it is not in dispute that the father of the applicant had purchased four plots in the year 1974. Thereafter dispute was raised before the Civil Court by the legal heirs of the then owner after the death of the father of the applicant, which was decided in favour of the applicant. Necessary entries pertaining to ownership over the plots were taken in the record of Nagpur Improvement Trust and City Survey and there is no challenge to the same. The Sub-Registrar has also not raised any objection as to the ownership of the applicant over the plot No.35. The bank from

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which non-applicant No.2 had obtained the financial assistance and after scrutiny of the entire documents advanced loan in favour of the non-applicant No.2. Thus, it is crystal clear that there is no dispute as regards the ownership of the applicant over the said plot from 1974 till execution of the sale deed, in favour of non-applicant No.2, therefore, the contention of the non-applicant No.2 that suppressing the fact of civil dispute the said plot was sold to the non-applicant No.2 with dishonest intention, is not sustainable. It is apparent that the nature of the dispute between the parties is of a civil nature. During the pendency of this application, the joint pursis was filed by the applicant and non-applicant No.2 that the non-applicant No.2 during the course of hearing has raised the grievance that if the proceeding before the Nagpur Improvement Trust for grant of building permit instituted by the non-applicant No.2 and Shri Nitin Yeshwant Shende in respect of plot Nos.35 and 36 of Mouza Babulkheda, the applicant would not obstruct the same, then he has no objection to quash the First Information Report. The applicant also undertook that she will not any objection or obstruction in the proceeding if any filed on behalf of non-applicant No.2 and Shri Nitin Yeshwant Shende in respect of plot Nos.35 and 36 of Mouza Babulkheda at Khasara No.76/2 at Fulmati Layout, situated at Tahsil and District Nagpur, in respect of obtaining building permit before the Nagpur Improvement

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Trust. Thus, the entire investigation papers discloses that the dispute between the applicant and non-applicant No.2 is of a civil nature. Now, they have amicably addressed the issue and it was decided that the applicant would not raise any objection as far as the construction of building on plot Nos.35 and 36 is concerned. The allegation against the present applicant to the effect that he has sold out the said plots though there was a civil dispute, which appears to be incorrect as the investigation papers reveals that the applicants are the owners of the said property and the record also shows their ownership. Therefore, as far as the offence under Section 420 of IPC is concerned, there was no such intention of deception therefore, the offence of cheating is not made out. The ingredients of offence of cheating described in Section 415 is that "Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

8. To hold a person guilty of cheating as defined under Section 415 of the IPC, it is necessary to show that he had

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fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. In other words, Section 415 of the IPC which defines cheating, requires deception of any person.

(a) inducing that person to:

(b) to deliver any property to any person,

(c) to consent that any person shall retain any property, and

(d) intentionally induces that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person, anybody's mind, reputation or property.

9. In the light of the above definition, admittedly, there is nothing on record to show the dishonest intention of deception on the part of the present applicants. Apparently, the dispute between the applicants and non-applicant No.2 appears to be of a civil nature and therefore, continuing the criminal proceeding against the present applicants would be an abuse of process of law. In view of the observation of the Hon'ble Apex Court in the case of **State of Haryana and others Vs Bhajan Lal and others** reported in **1992 Supp. (1) SCC 335** wherein the

Hon'ble Apex Court laid down the guidelines wherein the power under Section 482 of Cr.P.C. should be exercised.

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

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(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10. In the light of the above observation, if the facts of the present case are considered and the evidence collected during the investigation, admittedly, no offence is made out against the present applicant to proceed with the trial. In that circumstances, forcing the applicant to face the trial would be abuse of the process of law. In view of that, the application deserves to be allowed. Accordingly, we proceed to pass following order:

ORDER

(i) The application is **allowed**.

(ii) The First Information Report in connection with Crime No.274/2021 dated 16.06.2021 registered with Police Station Ajni, District Nagpur, for the offence punishable under Section 420 read with

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Section 34 of the Indian Penal Code and consequent proceeding arising out of the same charge sheet bearing No.203/2022 pending before the learned Chief Judicial Magistrate, Nagpur, is hereby quashed and set aside to the extent of present applicant Smt. Vijayshree d/o Tarachand Vaidya.

The application is disposed of in the above said terms.

(NANDESH S. DESHPANDE, J) (URMILA JOSHI-PHALKE, J)

Sarkate.