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

CRIMINAL APPLICATION [APL] NO.1449 OF 2023

1. Smt. Pushpa Omprakash Mantri,
   Aged about 65 years,
   Occupation-Housewife.

2. Jaiprakash Chunilal Mantri,
   Aged about 70 years,
   Occupation-Business.

3. Sau. Asha Jaiprakash Mantri,
   Aged about 64 years,
   Occupation-Business.

4. Ashokkumar Chunilal Mantri,
   Aged about 67 years,
   Occupation-Business.

5. Sau. Sudha Ashokkumar Mantri,
   Aged about 63 years,
   Occupation-Business.

6 Kishorkumar Chunilal Mantri.
   Aged about 63 years,
   Occupation-Business.

7. Sau. Sandhya Kishor Mantri,
   Aged about 56 years,
   Occupation-Housewife.

All Resident of Rallies Plot, Amravati
Tahsil and District-Amravati. .. Applicants

.. Versus ..

1. The State of Maharashtra.
   Through Police Station Officer,

Police Station Gadge Nagar, Amravati
City, Tah. and District-Amravati.

2. Ameenabi Sk. Rahman,
Aged 76 years, Occu : Houewife,
R/o. Kalim Colony, Amravati,
Through her Power of Attorney,
Sandeep Banwarilal Dixit,
Aged about 53 years,Occ : Business,
R/o. Shri Krushna Peth, Amravati,
Tah. & District-Amravati. .. Non-Applicants

……….

Shri A.S. Mardikar, Senior Advocate assisted by Shri V.R. Deshpande, Advocate for Applicants.
Ms. Shamsi Haider, Additional Pubic Prosecutor for Non-Applicant No.1/State.
Shri S.M. Vaishnav, Advocate for Non-Applicant No.2.

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CORAM : ANIL S. KILOR AND PRAVIN S. PATIL, JJ.

DATED : JUNE 09, 2025.

ORAL JUDGMENT [Per : Pravin S. Patil, J.]

1. **Rule.** Rule is made returnable forthwith. By consent of the learned Counsel for the parties, the matter is taken up for final disposal.

2. By this application, the applicants are seeking to quash and set aside the First Information Report registered vide Crime No.1098/2023 with the Police Station, Gadge Nagar, Amravati City,

District-Amravati for the offence punishable under Sections 420, 465, 467, 468, 471, 120-B r/w 34 of the Indian Penal Code.

3. In short, the gist of the allegation against the present applicants as per the prosecution is that, the present applicants and non-applicant no.2 jointly filed an application dated 17.08.1993 before the Sub-Divisional Officer, Amravati for exchange of the suit field owned by non-applicant no.2 with field owned by applicants. Accordingly, Revenue Case was registered and permission was granted by an order dated 07.10.1993 by the office of Sub-Divisional Officer to exchange the suit field. However, lateron it is alleged that the present applicants got the exchange-deed of suit field without consent of non-applicant no.2 and said exchange-deed was not fully stamped as required under the provisions of law. The deficit stamp duty was paid in the year 2008. Hence, according to non-applicant no.2, by using the incomplete document, the present applicants mutated their names in revenue record as an owners of the property and committed fraud on non-applicant no.2. On the basis of these allegations, above said offence came to be registered against them.

4. The present applicants challenged the registration of the offence mainly on the ground that a civil dispute with regard to the

same property has been already decided in their favour up to this court in various proceedings and accordingly the documents namely exchange-deed had attended finality as per the judgments of the civil court. Hence, the present complaint lodged by the non-applicant no.2 is out of an ulterior motive to prosecute the applicants in a vexatious proceeding. Hence, the applicants prayed to quash and set aside the criminal proceeding registered against them.

5. The learned APP appearing for the State strongly opposed the application by stating that after registration of the offence, they have procured the certified copy of the documents from the office of Sub-Registrar, Amravati. From the perusal of the said document, it is revealed that the registration of the said document was completed on 26.11.2008 by paying the deficit fees. As such, mutation of property to the names of applicants in revenue record on the basis of documents established the fact that the present applicants had committed the offence registered against them and, therefore, it is not a fit case to interfere at this stage by this court by exercising inherent powers.

6. The Non-Applicant No.2 strongly opposed the application and by her affidavit dated 11.01.2024, stated that the alleged exchange-deed dated 20.12.1993 is a false and fraudulent document

and on the basis of said document, applicants are trying to grab the property of non-applicant no.2. She further stated that the exchange-deed was registered for the first time on 26.11.2008 and, therefore, all the entries taken by the applicants in revenue record earlier to year 2008 is nothing but forgery on the part of applicants. She further stated that the said document is not registered as per the provisions of law and, therefore, it is not a valid document in the eyes of law. As such, on the basis of this submission, prayed for rejection of the application.

7. We have heard the rival parties and their respective submission. We have also perused the entire record filed by the respective parties in support of their submission.

8. In the present case, to understand the facts of the matter, it will be relevant to refer the certain admitted facts of the case.

(a) Non-applicant no.2 is the widow of Late Sheikh Rahman, who was in military service and died on 02.10.1972.

(b) On 19.02.1976 Non-Applicant No.2 being a widow of a military personnel, the land bearing field Survey No.32/1-E ad-measuring 1 H 54 R of Mouza Navsari village Rasulpur, District-Amravati was allotted to her.

(c) The present applicants, Late Chunnilal and Late Omprakash Mantri owned the field Survey No.28/2 admeasuring 1 H

21 R of village Rasulpur, District-Amravat.

(d) On 17.08.1993, non-applicant no.2 agreed for exchange of her suit field with the agricultural land owned by present applicants. Accordingly, joint application was filed before the Sub-Divisional Officer, Amravati for permission of transfer of land. Same was registered as Revenue Case No.MRC/81/Navsari/1993-94.

(e) On 07.10.1993, the learned Sub-Divisional Officer, Amravati granted permission for exchange of land.

(f) On 20.12.1993 by registered exchange-deed, the non-applicant no.2 exchanged the suit field bearing Survey No.32/1-E admeasuring 1 H 54 R with the field owned by applicants bearing Survey No.28/2 ad-measuring 1 H 21 R of village Rasulpur.

(g) In addition to the same, the applicants also paid Rs.1,30,000/- to non-applicant no.2 and consequent to said transaction, mutation entries were recorded in the revenue record.

(h) Non-Applicant No.2 along with her daughter challenged the order of Sub-Divisional Officer dated 07.10.1993 before the Maharashtra Revenue Tribunal. However, the said appeal was dismissed on 09.11.1998 and was confirmed by this Court in Letters Patent Appeal No.08/2000 vide judgment dated 08.06.2000.

(i) The son and daughter of non-applicant no.2 filed Special Civil Suit No.38/2001 challenging the exchange-deed dated 20.12.1993. The said suit was dismissed vide judgment dated 10.11.2006 and the judgment of the trial Court was confirmed in Regular Civil Appeal No.156/2019 vide judgment dated 09.12.2021.

As such in all revenue proceeding and civil proceeding, the permission granted by Sub-Divisional Officer dated 07.10.1003 and registration of exchange-deed dated 20.12.1993 is upheld as legal and justified.

9. After losing all the revenue as well as civil proceedings, the non-applicant no.2 tried to disturb the possession of applicants over the land. Therefore, the present applicants filed Special Civil Suit No.963/2022 before the learned Civil Judge, Senior Division, Amravati for restraining the non-applicant no.2 and her agents from disturbing peaceful possession of the applicants. In the same proceeding applicants has filed application for temporary injunction. The same was allowed on 19.06.2023. As such, applicants are in possession of the land in terms of exchange-deed executed between them.

10. It is clear from the record that in the year 1993, the exchange-deed was registered bearing No.1881/1993 and there was no objection from any authority nor from non-applicant no.2 for the registration of the document. Thereafter, first time in the year 1995, applicants received a notice from the office of the Sub-Registrar, Amravati, wherein it is stated that after verification of actual market price of property mentioned in exchange-deed dated 20.12.1993, it appear to the enquiry authority that correct market price of the

property is not mentioned therein, hence explanation was called from the applicants. The present applicants submitted their explanation that there is no undervaluation of the property and no recovery as far as stamp duty is initiated against them. Accordingly, the said document was renumbered as Document No.676/1995. After that in the year 2008 again scrutiny was conducted and an amount of Rs.3,500/- was shown to be outstanding against the applicants towards deficit stamp duty and penalty. The said amount was immediately deposited by the applicants with the office of the Deputy Collector, Amravati. Hence, it is clear that the present applicants complied with the defects time to time pointed out by the concerned department in respect of exchange-deed.

11. In the light of above said factual position, the question arose in the present case, whether there is an element of crime on the part of applicants by executing under valued exchange-deed and registration of offence under Sections 420, 465, 467, 468, 471 of the Indian Penal Code is justified in the matter.

12. It will be relevant to refer the judgment of Hon'ble Supreme Court of India in the case of ***Mohammed Ibrahim and others .vs. State of Bihar and another,*** reported in ***(2009) 8 SCC 751,*** wherein Hon'ble

Supreme Court has considered the Sections 420, 467 and 471 of the Indian Penal Code. The relevant paras are reproduced as under :

> *10. Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.*
>
> *11. Section 470 defines a forged document as a false document made by forgery. The term "forgery" used in these two sections is defined in section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery.*
>
> *12. Section 464 defining "making a false document" is extracted below :*
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> *"464. Making a false document.--A person is said to make a false document or false electronic record---*
>
> *First.--Who dishonestly or fraudulently -*
> *(a) makes, signs, seals or executes a document or part of a document;*
> *(b) makes or transmits any electronic record or part of any electronic record;*
> *(c) affixes any digital signature on any electronic record;*
> *(d) makes any mark denoting the execution of a document or the authenticity of the digital signature,*
>
> *with the intention of causing it to be believed that such document or a part of document, electronic record or*

digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or

Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words `digital signature' wherever they occurs were substituted by the words `electronic signature' by Amendment Act 10 of 2009]."

13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the *other accused.*

14. An analysis of Section 464 of Penal Code shows that it divides false documents into three categories:

1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a `false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived :

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

13. From the above said judgment of Hon'ble Supreme Court of India, it is clear that the document can be said to be a false document if he made or executed a document claiming to be someone else or authorised by someone else, or he altered or tampered a document or he obtained a document by practicing deception or from a person not in control of his senses.

14. In the present case, it is crystal clear that the present applicants neither executed a document claiming to be someone else nor tampered the document nor obtained a document by practicing deception. On the contrary, there was a valid transaction between applicants and non-applicant no.2. Only issue, which is alleged in the matter, is that there was a deficit court fee while executing the document. According to us, having a deficit court fee does not amount to forge a document at the instance of applicants. If the document executed is not a false document as stated above, then according to us, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of IPC are attracted in the present matter.

15. Likewise for attracting Section 420 of IPC, the dishonest intention starts with a very inception of the transaction and, therefore, to attract the ingredients of Section 420 of IPC, there should be

deception from the inception making a false or misleading representation. However, in the present case, it is not the allegation of the non-applicant no.2 that from the very inception of the transaction, she was cheated by the applicants. On the contrary, there is an execution of registered exchange-deed and only flaw in the said transaction is about the deficit court fee. Therefore, according to us, Section 420 of IPC is also not attracted in the matter.

16. In addition to above, it is pertinent to note that this court in LPA No.8/2000 decided on 08.06.2000 has upheld the transaction of exchange-deed executed between applicants and non-applicant no.2 dated 20.12.1993. The said transaction was on the basis of permission granted by Sub-Divisional Officer by his order dated 7.10.1993. Not only this in a civil proceeding, the validity of the transaction and the exchange-deed is already upheld and attended the finality in the matter. Therefore, once the validity of the document is already decided by the competent court of law, it is not expected from the non-applicant no.2 to set into motion again the criminal law against the applicants.

17. Furthermore, it is clear that complainant is attempting to give the cloak of a criminal offence to matter which is purely civil in nature

to apply pressure on the applicants. The same would nothing but abuse of process of law. Hence, according to us, it is a fit case to invoke the inherent powers and to quash the criminal proceeding registered against the applicants. In the circumstances, the application is allowed.

18. The First Information Report registered vide Crime No.1098/2023 with Police Station, Gadge Nagar, Amravati City, District-Amravati for the offence punishable under Sections 420, 465, 467, 468, 471, 120-B r/w 34 of the Indian Penal Code, is hereby quashed and set aside.

19. Rule is made absolute in the above terms.

(Pravin S. Patil, J.) **(Anil S. Kilor, J.)**

Gulande