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

CRIMINAL APPLICATION (APL) NO.25 OF 2023

1. Rajesh s/o Siyaram Sawarkar,
Aged about 53 Years,
Occupation : Business,

2. Archana w/o Rajesh Sawarkar,
Aged about 44 Years,
Occupation : Business – Housewife,
Both Applicant No.2 and 3
R/o Flat No.302,
Part Street Apartment Plot No.64,
Shivaji Nagpur Nagpur – 440010. **.... APPLICANTS**

// VERSUS //

1. The State of Maharashtra through
Police Station Officer, Police Station,
Hudkeshwar, Nagpur,
District Nagpur.

2. Shobha Ramesh Tilgule,
Aged about 65 Years,
Occupation : Housewife,
R/o. Near Kashibai Mandir,
New Shukrawari, Nagpur. **.... NON-APPLICANTS**

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Mr. Bhushan Dafle, Counsel for the applicant.
Ms. Sneha Dhote, APP for non-applicant No.1/State.

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

DATED : 04/09/2025

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

1. Heard.

2. **Admit**.

3. Leave is granted to the applicants to correct the name of the RCC number of the proceeding.

4. This application is filed by the applicant under Section 482 of the Code of Criminal Procedure for quashing and setting aside the First Information Report vide Crime No.467/2021 registered under Sections 406, 420 read with Section 34 of the Indian Penal Code and charge-sheet dated 20.07.2023 bearing No.218/2023, upon which RCC No.3386/2023 came to be registered.

5. Brief facts which are necessary for the disposal of the application are as under:

The applicants are the Directors of the company namely Devashree Properties Private Limited. The co-accused No.3 Kunal Nandkishor Yelne was working in the company and was handling the affairs of the company like execution of the documents on behalf of the company, accepting the payments, paying service tax, VAT etc. Initially, he was paying all the aforesaid affairs since 7 to 8 years and therefore, the present applicants have trust in him. As per the contention of the applicants, the Chartered Accountant of the company had demanded all the bank details of the company, then it was noticed that the co-accused did not deposit all the amount to the account of the company having written statement of State Bank of India, Gopal Napur, Nagpur and Tirupati Urban Bank, Pratap Nagar, Nagpur. At that time, the applicant No.1 came to know that all the amount which was received towards the transaction of the township namely Kalash Enclave were deposited by the Kunal i.e. accused No.3 in another account which was falsely created by him. Thus, he had cheated the company to the tune of Rs.70 to 80 Lakh. It is therefore, the applicant No.1 had lodged report against the accused No.3 on 01.02.2019 with the Crime Branch, Sadar Nagpur.

6. In pursuance of the said report, lodged by the applicant No.1, the Investigating Officer had recorded the statements of the applicant No.1 and also of the co-accused No.3 - Kunal. During the course of preliminary investigation, the co-accused has admitted that he has cheated the company and therefore, he agreed to hand over the amount of Rs.30 Lakh to the accused No.1. The co-accused Kunal had also given six blank cheques to the applicant No.1 and had authorized the applicant No.1 to fill up the same while depositing it for the encashment. Thus, the matter came to be amicably settled between them. However, one of the cheques given by the accused No.3 was dishonoured and therefore, the applicant No.1 has filed the complaint bearing SCC No.2694/2021 under Section 138 of the Negotiable Instruments Act. It is contended that it

was the co-accused who has actually cheated the applicants and his company and therefore, the present applicants have no nexus with the alleged offence in the crime in question. It is further contended that the informant / non applicant No.2 has lodged the report dated 02.08.2021, alleging therein that in the year 2007, the deceased husband Ramesh was willing to purchase the plot. Therefore, he approached the co-accused Nos.3 and 4 and booked the flat for consideration of Rs.23,50,000/- and on 13.06.2012 given an amount of Rs.1,00,000/- to the company. It is further alleged that, till 2017, an amount of Rs.23,50,000/- has been paid time to time in cash. It is further alleged that, in spite of this, the applicants and other co-accused have failed to execute the sale deed in their favour and the applicant No.1 has executed the sale deed in respect of the disputed flat in favour of the applicant No.2. It is also alleged that thereafter, the co-accused Kunal in order to settle the matter had handed over certain cheques to her. However, those cheques were dishonoured and therefore, she approached the Police Station and lodged the report. On the basis of which, the Crime No.467/2021 came to be registered with Police Station Hudekeshwar, Nagpur for the offences punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code.

7. It is submitted by the learned Counsel for the applicants that as far as the present applicants are concerned, they are not at all involved in the said crime. The entire transaction took place between the informant and accused No.3, being the they are the Director of the said company, they are implicated as an accused. Now, the matter is already settled between the parties and the sale deed is also executed on 10.02.2023 at Nagpur. The copy of the sale deed is also placed on record. He further invited our attention towards the memorandum of understanding i.e. consent terms. As per the said consent terms, the sale deed is already executed and no purpose will be served by insisting the present applicants to face the trial.

8. Learned APP strongly opposed for the same, however, she fairly submitted that if the settlement has taken place, then appropriate orders shall be passed.

9. After hearing both sides and on going through the settlement terms, it reveals that both parties have arrived at a settlement. The transaction primarily in the nature of civil nature i.e. the informant agreed to purchase the flat and paid the consideration amount, but the sale deed was not executed. Whether there was an intention since inception or not is a matter of evidence. However, considering the fact that now the matter

is already settled and the role of the present applicants is also limited, there is no allegations that they have received amount. All the entire allegations are levelled against the co-accused i.e. accused No.3 Kunal. In view of that, the application deserves to be allowed. However, considering the fact that the entire investigation machinery was used by the present applicants and the informant and therefore, some costs is requires to be imposed on the present applicants. In view of that, we proceed to pass following order:

ORDER

(i) The application is **allowed** subject to the costs of Rs.20,000/- [Rs. Twenty Thousand].

(ii) The costs be paid to the High Court Legal Services Sub-Committee, Nagpur.

(iii) The First Information Report vide Crime No.467/2021 dated 02.08.2021, registered with Police Station Hudkeshwar, District Nagpur, for the offence punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code and charge-sheet dated 20.07.2023, bearing No.218/2023, upon which RCC No.3386/2023, is hereby quashed and set aside, as regards to the present applicants only.

The application is disposed of.

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

Sarkate.