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

CRIMINAL APPLICATION (APL) NO. 18/2023

Sameer S/o. Sureshrao Dhawale,
Aged about 46 yrs., Occ. Business,
R/o. Shrikunj, First Floor,
C/o. Sachin Bajad, Old RTO Road,
behind Rami Heritage, Kirti Nagar,
Akola.

...**APPLICANT**

VERSUS

1. The State of Maharashtra,
through P.S.O. Civil Lines,
Akola, Tal. & Dist. Akola.

2. Smt. Veena Wd/o. Sureshrao Dhawale,
Aged about 69 yrs., Occ. Household,
R/o. Siddhi Bungalow, Alsi Plots,
Akola, Tal. & Dist. Akola.

NON-APPLICANTS

Mr. Anil Mardikar, Sr. Advocate assisted by Mr. Ved R. Deshpande, Advocate for applicant.
Mr. S.S. Hulke, Addl. Public Prosecutor for non-applicant No.1/State.
Mr. F.T. Mirza, Sr. Advocate assisted by Mr. Z.Z. Haq, Advocate for non-applicant No.2.

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

CLOSED FOR JUDGMENT : **31.07.2025**
PRONOUNCEMENT OF JUDGMENT : **19.08.2025**

JUDGMENT : (PER: M. M. NERLIKAR , J.)

Heard.

2. **Rule**. Rule made returnable forthwith. By consent of parties, heard finally.

3. The present application is filed for quashing charge-sheet bearing No. 606/2022 dated 16.12.2022 and proceedings in RCC No. 1591/2022 pending before the learned 4th Jt. Judicial Magistrate First Class, Akola, arising out of First Information Report ("FIR") bearing Crime No.327/2022 dated 20.07.2022 registered with Police Station Civil Lines, Akola, Taluka and District Akola for the offences punishable under Sections 406, 409, 420 read with Section 34 of the Indian Penal Code.

4. Brief facts:-

The First Information Report was lodged by non-applicant No.2 Smt. Veena wd/o. Sureshrao Dhawale who is the mother of present applicant. It is alleged in the FIR that Suresh Dhawale husband of non-applicant No.2 and father of present applicant died on 13.02.2021. Deceased husband namely Suresh Dhawale started business under the name and style of “M/s. Dhawale Automobiles” which was a partnership Firm. It is further alleged that accused No.2 who is the Manager of Axis Bank had issued a notice dated 10.09.2020, by which the informant came to know that the applicant and accused No. 2 have committed misappropriation of the property of the partnership Firm by availing loan and distributing the same illegally. Despite of fact of dissolution of Partnership Firm by letter dated 03.06.2019, the present applicant continued with the business of the Firm illegally. It is further alleged that in connivance with the Manager of Axis Bank, viz accused No.2 applicant misappropriated Rs.80,50,000/- and that amount was used for their own purpose. Based on these allegations, FIR bearing Crime No.327/2022 dated 20.07.2022 was registered.

5. Mr. Anil Mardikar, the learned senior counsel for the applicant submits that the informant is the mother of present applicant and at the instigation of another son i.e. brother of

present applicant namely Pushkar Dhawale, the present complaint was lodged. A property dispute arose after the death of their father Suresh Dhawale which has given rise to several civil litigations and are pending for adjudication in the Court of law. It is further submitted that the present FIR is registered with an ulterior motive in order to pressurize the applicant. The learned senior counsel has also contended that even if the contents of FIR is taken as it is, no offence is made out, as the dispute is of civil nature, which has been given colour of criminal proceedings. It is submitted that though the deceased Suresh Dhawale issued notice on 03.06.2019, thereby dissolving the partnership Firm i.e. "M/s. Dhawale Automobiles", however, the responsibility to wind up the affairs of the Firm and to complete the transactions still persists as per Section 47 of the Indian Partnership Act, 1932 ("the Act of 1932").

6. In light of Section 47 of the Act of 1932, it is argued that in order to complete the liability of the Firm, he continued with the transactions of the Firm. Our attention was invited to

various documents in order to show that there is no misappropriation on the part of the applicant. On the contrary, he was required to borrow loan so as to pay others in order to fulfil his obligation as a partner. It was also submitted that he has paid huge amount towards his obligation as a partner and there is no misappropriation as referred in the FIR. Lastly, it was submitted that there is absence of material against the applicant in the charge-sheet in order to connect the applicant with the alleged crime and therefore, requested for quashing the criminal proceedings.

7. On the other hand, learned APP for non-applicant No.1 and Mr. F. T. Mirza, the learned senior counsel for non-applicant No. 2 vehemently opposed the prayer for quashing the criminal proceedings. They both submitted that the offence is serious in nature. It is submitted that deceased Suresh Dhawale has issued notice on 03.06.2019 stating that the applicant had left no other option to Suresh Dhawale but to issue notice of dissolution of Firm due to illegal activities of applicant and therefore, by the said notice, Suresh Dhawale

had dissolved the Firm i.e. “M/s. Dhawale Automobiles”. Even after the notice which was duly served on the applicant, he unilaterally conducted the transactions of the Firm. He has availed loan which is not permissible even taking into consideration Section 47 of the Act of 1932 and this by itself shows that he is having every intention to cheat deceased Suresh.

8. Learned senior counsel Mr. F.T. Mirza further submits that there is enormous misappropriation of amount, however the Investigating Officer has conducted the investigation half-heartedly and therefore, he requests in the interest of justice to bring the truth, to direct further investigation. He further submits that though the Investigating Officer collected certain account statements of the Bank, however besides that he has done nothing. The Investigating Officer ought to have followed the money trail, however there is nothing in the charge-sheet to show where the money has gone. He lastly submits that by rejecting the present application, this Court may direct further investigation invoking powers under Section 482 of the Code of

Criminal Procedure ("the Code") in order to do complete justice.

9. Upon careful consideration of the arguments and after going though the material placed before us, we find that the FIR was registered by the mother i.e. non-applicant No.2 against son i.e. present applicant. Though during the lifetime, deceased Suresh Dhawale issued notice on 03.06.2019 thereby dissolving the partnership Firm i.e. "M/s. Dhawale Automobiles", however even after dissolution of the Firm, the present applicant carried on further business unilaterally which is contrary to the provisions of the Partnership Act, 1932. Though the learned senior counsel for applicant tried to submit that the dispute is of civil nature to which criminal colour was given, however the same is not acceptable as there are serious allegations of misappropriation amount.

10. To buttress the submissions, learned senior counsel appearing on behalf of the applicant has relied on as many as ten judgments of the Hon'ble Supreme Court which are

Shailesh Kumar Singh Alias Shailesh R. Singh Vs. State of Uttar Pradesh and ors. (Criminal Appeal No.2963/2025, decide on 14.07.2025), Sachin Gar Vs. State of U.P. and another, 2024 SCC Online SC 82, *Naresh Kumar and another Vs. The State of Karnataka and another, (Criminal Appeal-----/2024 arising out of SLP (CRL.) No.1570/2021, decided on 12.03.2024*), *Kailashben Mahendrabhai Patel and others Vs. State of Maharashtra and another, (Criminal Appeal No.4003/2024 arising out of SLP (CRL) No.4044/2018, decided on 25.09.2024)*, *Ahmad Ali Quraishi and another Vs. State of Uttar Pradesh and another, (2020) 13 SCC 435*, *Delhi Race Club (1940) Ltd. and others Vs. State of Uttar Pradesh and another, 2024 SCC Online SC 2248*, *Velji Raghavji Patel Vs. The State of Maharashtra, AIR 1965 SC 1433*, *Saligram Ruplal Khanna Vs. Kanwar Rajnath, 1974 CJ (SC) 340*, *Harshendra Kumar D. Vs. Rebatilata Koley and others, (2011) 3 SCC 351* and *Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others, (1998) 5 SCC 749*. The sum and substance of all these judgments depict that if the allegations are not made out and they do not constitute the offence and allegations are of civil nature, the High Court can quash the criminal proceedings. Further, the ratio which can be gathered from these judgment is that to constitute an offence of cheating, there has to be something more than a *prima facie* case on record to indicate that the intention of the accused was to cheat the complainant right from the inception. The plain reading of the FIR, however, does not disclose any element of criminality. Further, reliance is placed by learned senior counsel on the case of ***Delhi Race Club (1940) Limited Vs. State of Uttar Pradesh, (2024) 10 SCC 690,*** wherein it is held that the offence under Sections 406 and 420 of the Indian Penal Code cannot go hand in hand.

11. We have gone through the Partnership Deed. Deceased Suresh Dhawale was having 60% share, whereas the present applicant is having 40% share as per Clause (3) of the Partnership Deed dated 01.03.2014. Clause (3) of the Partnership Deed also speaks about the duration of the partnership and that the Partnership Firm shall be “At Will”.

The business of the Partnership Firm is to sell Tractors, Trailers, spares, Mild Steel and Agricultural Implements along with Repairs of Tractors, Trailers and Agricultural Implements and further to divert and do the business as mutually decided by the partners in the future. The partners may arrange and/or contribute the funds to the Firm under their current account and/or loan account from time to time.

12. The learned senior counsel for applicant has taken us to clause which states, in case of death, insolvency or retirement of any partner, the Partnership Firm shall not be dissolved and the surviving partner/s may continue to carry on the business either as the Sole proprietor or in Partnership with others as may be mutually agreed upon by and between the surviving partners. However, it can be gathered from the recital of the Partnership Deed that the duration of the Partnership Firm was "At Will" and as soon as the notice of dissolution was issued to the present applicant by deceased Suresh Dhawale on 03.06.2019, the firm stood dissolved and it was the duty of the present applicant to stop all the

transactions on behalf of the Partnership Firm. However, the present applicant has not only availed loans from different persons, but also carried out several transactions on behalf of the Firm as can be gathered from the material placed before us.

13. It is not out of place to mention at this juncture that though the Partnership Firm was dissolved, however the business continued even after notice of dissolution dated 03.06.2019. The statement of account of the Firm depicts that the applicant has borrowed huge amount from his wife namely Snehal and has also paid huge amount to her.

14. The report as lodged by non-applicant No.2 indicates that on 03.06.2019, the husband of non-applicant No. 2 issued a notice to the applicant stating therein that the partnership stands dissolved. Despite such status, the applicant has on 07.06.2019, paid to Ashok Leyland an amount of Rs. 80,50,000/-. According to non-applicant No. 2, this transaction amounts to misappropriation of amount and further that the

bank manager has facilitated this transaction and, therefore, the applicant and bank manager are made accused.

15. The argument of petitioner is that the amount paid on 07.06.2019 is the amount of transaction that occurred on 31.05.2019 and, therefore, under Section 47 of the Act of 1932, the transaction was not only permissible but is something which the applicant was duty bound to pay as a liability due and payable to Ashok Leyland.

16. We find that such payment may be permissible in terms of Section 47 of the Act of 1932. The matter, however, does not end here. What transpires from the documents placed on record is that the applicant has, after 07.06.2019, continued the transactions in the said account and has paid huge amount to his wife and has also received amount from her. Similarly, amount is paid and received from various other persons.

17. The argument of the petitioner is that the applicant's wife is a separate entity and that the firm has taken loan from her right from the year 2013-14 and, therefore, the entries post

07.06.2019 will have to be understood in the light of what has been provided under Section 47 of the Act of 1932.

18. Thus, it is suggested that the transaction done by Dhawale Enterprises, the partnership firm, after 07.06.2019 is in terms of Section 47 of the Act of 1932, which provides as under:-

> ***"47. Continuing authority of partners for purposes of winding up.—***
>
> *After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners continue notwithstanding the dissolution, so far as may be necessary to wind up the affair of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:*
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> *Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent."*

19. Mr. Mardikar, the learned senior counsel submits that not only to Snehal the wife of applicant, but the amount was also paid to others and therefore, he was performing his

obligation towards the Firm. The non-applicant No.2 has disputed these transactions towards Firm's obligation.

20. We cannot go into these disputed question of facts, when we are exercising powers under Section 482 of the Code. However, we find that there are several transactions of borrowing money at the behest of the present applicant. We have gone through the bank account statement of Dhawale Enterprises to find that multiple transactions have been done after 07.06.2019 which includes credit and debit entries from the wife of applicant as also multiple entries in the name of third party e.g. there is credit entry on 20.07.2019 which show that Rs. 11,00,000/- approximately was received from Samarth Fabrication and similarly, on 03.09.2021, an amount of Rs.4,25,000/- approximately was received from M/s. Kubota Agricultural. There are several entries which indicate that various payments were made from the account of Dhawale Automobiles like on 29.06.2019, an amount of Rs. 14,50,000/- approximately was paid to Aditya Agency. On 10.07.2019, an amount of Rs. 12,75,600/- was paid to Santosh Agrawal and

Rs. 5,50,000/- was paid on 16.07.2019 to Nilesh Agrawal. There is, however, no investigation relating to these transactions. We feel that Investigating Officer ought to have recorded statements of the persons to whom either the amount was paid or received to understand whether the applicant has misappropriated the funds particularly when the husband of non-applicant No. 2 has by letter dated 03.06.2019 dissolved the partnership firm.

21. Another important aspect is a letter dated 01.07.2022 issued by Ashok Leyland to the Investigating Officer. The company in the concluding paragraph has stated that the applicant had informed the company that the partnership firm is validly subsisting but he had not submitted any valid proof regarding the same and accordingly, the business with Dhawale Automobile was terminated. Thus the applicant made Ashok Leyland believe that the partnership firm was validly subsisting. Further, investigation is, therefore, necessary.

22. There is another angle to the dispute as well. According to the applicant, his brother is the one who has instigated non-applicant No. 2 and her husband to initiate these proceedings by making false allegations. Thus, the entire family is indulging into making allegations against each other. What is important from the point of view of investigation is that according to the applicant, his father i.e. husband of non-applicant No. 2 was for many years prior to June, 2019, mentally not fit and, therefore, he had filed a suit in the year 2020 for declaration and permanent injunction against his father, brother and non-applicant No. 2 and sister of the non-applicant No.2 stating therein that the father is of unsound mind and hence is sued through next friend. According to the applicant, the suit for declaration was filed seeking declaration that the properties belonging to the non-applicant No. 2's husband i.e. applicant's father and other such properties were joint family properties.

23. Thus, the question is whether the non-applicant No. 2's husband was mentally unsound prior to June, 2019. The

applicant has given details of Doctor and, therefore, the Investigating Officer could have easily recorded the statement and collected evidence about the mental status of the non-applicant No. 2’s husband. Another relevant incident on this point is that in July, 2020, the non-applicant No. 2’s husband has executed a registered Will bequeathing properties acquired by him.

24. Thus, on one part, there is a claim that the non-applicant No. 2’s husband was of unsound mind much prior to issuance of letter in June, 2019. As against the same, there is documentary evidence that he had executed Will and while doing so, Doctor’s certificate dated 24.07.2020 was obtained. The certificate is issued by Medical officer, PHC, Agar stating therein that Suresh Dhawale i.e. non-applicant No. 2’s husband was physically and mentally fit to do his routine activities. The investigation on this point could be relevant to understand the truthness in the allegations.

25. Mr. Mirza has relied on the judgment of ***Devendra Nath Singh Vs. State of Bihar and others, (2023) 1 SCC 48,*** wherein the Hon'ble Apex Court has, in context with powers of High Court to direct further investigation, held thus:

> *"45. For what has been noticed hereinbefore, we could reasonably cull out the principles for application to the present case as follows:*
>
> *45.1 The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial.*
>
> *45.2 The powers of the Magistrate to ensure proper investigation in terms of Section 156 CrPC have been recognised, which, in turn, include the power to order further investigation in terms of Section 173(8) CrPC after receiving the report of investigation. Whether further investigation should or should not be ordered is within the discretion of the Magistrate, which is to be exercised on the facts of each case and in accordance with law.*
>
> *45.3 Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the*

limitations of Section 173(8) CrPC, in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8) CrPC do not limit or affect such powers of the High Court to pass an order under Section 482 CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.

45.4 Even when the wide powers of the High Court in terms of Section 482 CrPC are recognised for ordering further investigation or reinvestigation, such powers are to be exercised sparingly, with circumspection, and in exceptional cases.

45.5 The powers under Section 482 CrPC are not unlimited or untrammelled and are essentially for the purpose of real and substantial justice. While exercising such powers, the High Court cannot issue directions so as to be impinging upon the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the State to take advice of the State Public Prosecutor as to under what provision of law a person is to be charged and tried when ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such inherent powers in extraordinary circumstances, the High

> *Court cannot specifically direct that as a result of further investigation or reinvestigation, a particular person has to be prosecuted.*

26. Further, in the case of ***State of Uttar Pradesh and another Vs. Akhil Sharda and others, (2023) 11 SCC 626***, in the impugned judgment of the Allahabad High Court FIR No.260/2018 was under challenge. The High Court was pleased to quash FIR No.260/2018, however it directed further investigation in another FIR bearing No.227/2019, as the allegations therein were very serious and it required further investigation. Being aggrieved by the order of quashing of FIR No.260/2018, the State approached the Hon'ble Supreme Court. The Hon'ble Supreme Court set aside the order of quashing by observing in para 19 and 20 which read as under:-

> *"19. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and the manner in which the High Court has allowed the petition under Section 482 Cr.P.C., we are of the opinion that the impugned judgment and order passed by the High Court quashing the criminal proceedings is unsustainable. The High Court has exceeded in its jurisdiction in quashing the*

criminal proceedings in exercise of powers under Section 482 Cr.P.C.

20. It is also required to be noted that even the High Court itself has opined that the allegations are very serious and it requires further investigation and that is why the High Court has directed to conduct the investigation by CB-CID with respect to the FIR No.227 of 2019. However, while directing the CB-CID to conduct further investigation/investigation, the High Court has restricted the scope of investigation. The High Court has not appreciated and considered the fact that both the FIRs namely FIR Nos.260 of 2018 and 227 of 2019 can be said to be interconnected and the allegations of a larger conspiracy are required to be investigated. It is alleged that the overall allegations are disappearance of the trucks transporting the beer/contraband goods which are subject to the rules and regulations of the Excise Department and Excise Law."

As Could be seen, though the Hon'ble Supreme Court set aside the order of the High Court to the extent of quashing of FIR No.260/2018, however, it has maintained the direction to conduct further investigation which can be gathered from para 20 of the said judgment. The Hon'ble Supreme Court did not disturb the finding so far as further investigation was concerned. Therefore, it can be gathered from the aforesaid decision that even in the quashment proceedings, if the High Court comes to a conclusion that the investigation has not been conducted properly, the High Court can exercise inherent powers vested under Section 482 of the Code.

27. Thus, the scheme of the Code is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the Police or by the Magistrate, is to ensure that the actual perpetrator of the crime are correctly booked and the innocents are not arraigned to stand trial and in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demands, the inherent powers under Section 482 Code could be exercised to direct further investigation or even reinvestigation. It is also clarified in the aforesaid judgment that the provisions of Section 173(8) Code do not limit or affect such powers of the High Court to pass an order under Section 482 Code for further investigation or reinvestigation, if the High Court is satisfied that such a

course is necessary to secure the ends of justice. Even when wide powers of the High Court in terms of Section 482 Code are recognised for ordering further investigation or reinvestigation, such powers are to be exercised sparingly, with circumspection, and in exceptional cases.

28. In the circumstances, we find that there is a scope of further investigation. Further, if the charge-sheet is accepted to be true, it is difficult to hold that the transaction under question is of civil nature.

29. Considering the peculiar facts of the present case, we are of the view that there are serious allegations of misappropriation of funds by the present applicant and to find out truth, further investigation is warranted, which may favour the applicant also in that sense.

30. In light of the above, present application is rejected.

31. We direct the Investigation Officer to conduct the further investigation in accordance with law and submit the supplementary charge-sheet as early as possible.

32. Application stands disposed of in above terms.

(M. M. NERLIKAR , J.) **(ANIL L. PANSARE, J.)**

Gohane