



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

**CRIMINAL WRIT PETITION NO.851 OF 2023**

Haji Sk. Md. Kalim Haji Sk. Ismail .Vs. State of Maharashtra, and another

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Office Notes, Office Memoranda of  
Coram, appearances, Court's Orders  
or directions and Registrar's order

Court's or Judge's Order

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Mr. C.R. Kulkarni, Advocate for petitioner.  
Mr. U.R. Phasate, A.P.P. for respondent/State.

**CORAM : ANIL S. KILOR, J.**  
**DATED : 25/02/2025**

1. Heard.
2. This is a writ petition filed by the petitioner challenging the judgment and order dated 05.08.2017 dismissing the revision application wherein the challenge was raised to the order of Judicial Magistrate First Class, Kalmeshwar, Nagpur, dated 17.08.2015, discharging the respondent No.2.
3. Thus, it is evident that the present writ petition came to be filed six years after the impugned order was passed. No justification for such delay has been provided and offered.
4. The petitioner filed a complaint under Section 419, 420 and 468 read with Section 34 of the Indian Penal Code (for short "IPC") against the respondent No.2 and

Shri Dhananjay Doulatrao Pund and Barkhat habib Somani. The learned Judicial Magistrate First Class, Saoner, vide order dated 01.06.2010, directed the Police Station, Kalmeshwar to register the crime and investigate in it and file report. Thereupon, the Investigating Officer investigated the matter and filed the final report on 19.05.2012. The conclusion recorded in the said report was that, no offence was made out against the accused persons. Accordingly, "B" summary was filed to which the petitioner filed objection on 03.12.2012. Thereupon, the learned Judicial Magistrate First Class, Kalmeshwar, decided to inquire into the matter without touching the merits of the case, as per Section 202 of the Code of Criminal Procedure. Then, the petitioner was examined on oath on 07.01.2013.

5. Thereafter, having gone through the evidence and the documents filed along with the complaint, more particularly, the sale deed dated 19.08.1976 the learned Magistrate found that recital of the said sale deed shows that the complainant has executed the sale deed in respect of property in question in favour of the respondent No.2 for consideration of Rs.14,000/- in presence of Ayub Kayum Ab. Karim and Shahid A. Rashid. It was also revealed that the respondent No.2 executed the sale deed on 07.05.2009 in favour of the accused No.2 in presence of accused Nos.3 and 4.

6. Furthermore, the learned Magistrate had gone through the report of the handwriting expert wherein, the opinion was recorded that signature of complainant on the alleged sale deed do not match with his comparative signature. Then the learned Magistrate went to the other two handwriting reports in respect of signature of Ayub Kayum Ab. Karim and Shahid A. Rashid, who were witnesses to the sale deed dated 19.08.1976 and held that their signatures do not match with the comparative signature.

7. Whereas, the handwriting report of State Examiner of Documents, CID, Maharashtra State, Nagpur, on the other hand opined that the signature of the complainant on sale deed and his specimen signature are one and the same. It is further opined that the signature of complainant on the sale deed is not in the handwriting of the accused No.1 i.e. the respondent No.2 and considering the overall material vide order dated 10.01.2014, the learned Judicial Magistrate First Class, Kalmeshwar, dismissed the complaint against accused Nos.2 to 4 under Section 203 of the Cr.P.C. and issued process against the respondent No.2 for the offence punishable under Sections 419, 420, 468 of the IPC.

8. Thereafter, on 17.08.2015, the learned Judicial Magistrate First Class, Kalmeshwar, passed the impugned

order discharging the respondent No.2, passing the following order:

*"1. The accused Ajaykumar Agrawal is discharged vide sec.245(2) of Cr.P.C. for offence punishable u/s 419, 420, 467 of IPC.  
2. His bail bond stand cancelled, if any."*

9. Thus, it is apparent from the above referred order that repeated chances were given to the petitioner to lead the evidence before charge and since the petitioner failed to lead any evidence before charge, the learned trial Court observed that no material found or brought by the complainant to frame the charge against the accused and accordingly, the respondent No.2 has been discharged.

10. The petitioner thereafter preferred a revision petition namely Criminal Revision Application No.283 of 2015. The Revisional Court upheld the order of the learned Magistrate finding that the order is just and proper and there is no perversity.

11. Thus, it is apparent on the face of the record that despite repeated chances, the petitioner failed to lead any evidence before charge and that was the reason to discharge the respondent No.2. After his discharge, though the revision application was filed promptly, however, after the judgment and order passed on revision petition dated

05.08.2017 no steps were taken to raise the challenge to the said judgment and order for about more than six years.

12. The sale deed which is in question is of the year 1976 and in between the period of 49 years has been lapsed and till date the charge is not framed in the trial for the reasons that the petitioner failed to lead evidence before charge.

13. Thus, considering the casual approach of the petitioner in the present matter and in view of the fact that, there is no illegality committed by both the Courts below in granting discharge to the respondent No.2, I do not find any merit in the present writ petition.

Accordingly the writ petition is **dismissed**.

**JUDGE**