



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

CRIMINAL REVISION APPLICATION NO.259 OF 2023

State of Maharashtra,
through Police Station Officer,
Police Station Kardha,
District Bhandara

...APPLICANT

VERSUS

1. Kusum Shivshankar Wanjari,
Age 63 yrs, Occ. Vice President (Laxmi
Gramin Bigar Sheti Shakari Pat Sanstha)
R/o. Ambadi/Silli, Tq. & Dist. Bhandara.
2. Savita Laxman Bawankar,
Aged 52 years, Occ. Approver, (Laxmi
Gramin Bigar Sheti Shakari Pat Sanstha)
R/o. Ambadi/Silli, Tq. & Dist. Bhandara.
3. Laxmi @ Shewanta Vishwanath Deshmukh,
Aged 52 years, Occ. Member (Laxmi
Gramin Bigar Sheti Shakari Pat Sanstha)
R/o. Ambadi/Silli, Tq. & Dist. Bhandara.
4. Vaishali Sanjiv Giripunje,
Aged 37 years, Occ. Clerk, (Laxmi
Gramin Bigar Sheti Shakari Pat Sanstha)
R/o. Silli/Ambada, Tq.& Dist. Bhandara
5. Smt. Barubai Harishchandra Badwaik,
Aged 76 years, Occ. Member, (Laxmi
Gramin Bigar Sheti Shakari Pat Sanstha)
R/o. Ganeshpur, beside the Badwaik
Printer, Bhandara, Dist. Bhandara.

6. Sau. Mangala Kishor Hatwar,
Aged 38 years, Occ. Member, (Laxmi
Gramin Bigar Sheti Shakari Pat Sanstha)
R/o. Silli/Ambadi, Tq. Dist. Bhandara.
7. Sau. Madhuri Prakash Aakre,
Aged 47 years, Occ. Member, (Laxmi
Gramin Bigar Sheti Shakari Pat Sanstha)
R/o. Silli/Ambadi, Tq. Dist. Bhandara.
8. Sau. Anusaya Kishan Wanjari,
Aged 48 years, Occ. Member, (Laxmi
Gramin Bigar Sheti Shakari Pat Sanstha)
R/o. Silli/Ambadi, Tq. Dist. Bhandara.
9. Sau. Sarita Kailas Chachere,
Aged 38 years, Occ. Member, (Laxmi
Gramin Bigar Sheti Shakari Pat Sanstha)
R/o. Silli/Ambadi, Tq. Dist. Bhandara.
10. Sau. Geeta Arun Gajbhiye
Aged 48 years, Occ. Member,
(Laxmi Gramin Bigar Sheti Shakari Pat Sanstha)
R/o. Bela (Davdipar) Tq. Dist. Bhandara.
11. Sau. Vanita Bisen Deshmukh,
Aged 47 years, Occ. Member, (Laxmi
Gramin Bigar Sheti Shakari Pat Sanstha)
R/o. Silli/Ambadi, Tq. Dist. Bhandara.
12. Sau. Kusum Jagdish Bawankar,
Aged 61 years, Occ. Member, (Laxmi
Gramin Bigar Sheti Shakari Pat Sanstha)
R/o. Silli/Ambadi, Tq. Dist. Bhandara

...NON-APPLICANTS

Mr. N.B. Jawade, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JULY 02, 2025.

ORAL JUDGMENT :

RULE. Rule made returnable forthwith. Taken up for the final disposal with the consent of the learned APP for the applicant.

2. None present for the non-applicants.
3. By this revision application, the State has challenged the order of refusing the framing of charge against the 12 accused persons and framing the charge against some of the accused persons without hearing the State and without compliance of Section 226 and 228 of the Code of Criminal Procedure.
4. Heard learned APP for the State who submitted that First Information Report dated 09.12.2016 registered at Police Station Kardha District Bhandara for the offences punishable under Sections 409, 420, 468, 471, 477 read with Section 34 of Indian Penal Code and Section 3 of Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999 (hereinafter referred as "MPID Act" for short) was registered against in all 21 accused persons at the instance of the informant who is the Auditor, Cooperative Organization, Bhandara.

5. After completion of the investigation, the charge-sheet was filed on 22.04.2020 for the offence punishable under Sections 409, 424, 468, 471, 477 read with Section 34 of Indian Penal Code and Section 3 of MPID Act. Initially, the charge-sheet was filed against in all 6 accused persons. The supplementary charge-sheet was filed against the remaining accused.

6. As per the case of the prosecution all the accused persons are connected with Lakshmi Gramin Bigar Sheti Sahakari Pat Sanstha, Silli and they misappropriated the amount and the gold deposited by various investors/depositors and failed to give them refund as per assurance, and therefore, the present crime is came to be registered.

7. After filing of the charge-sheet before the Sessions Judge, the matter was listed for framing of charge. The learned APP moved an application for grant of adjournment to argue on the point of charge. The Sessions Judge has rejected the adjournment application and without hearing the prosecution passed the impugned order below Exh.1 dated 14.9.2023 discharging 12 accused and framing charge against remaining accused without hearing the State.

8. Learned APP strongly contended that in view of Section 226 and 227 of Cr.P.C. the learned trial Court ought to have bear the parties before framing of charge and after hearing the learned trial Court can come to the conclusion whether charge is to be framed or the accused to be discharged.

9. In support of his contention he placed reliance on the decision of the Hon'ble Apex Court in the case of **Ram Prakash Chaddha vs The State Of Uttar Pradesh [(2024) 10 SCC 651]**.

10. Section 226 of the Code of Criminal Procedure provides that after the accused appears or is brought before the Court pursuant to commitment of case under Section 209 the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove guilt of the accused. Section 227 contemplates consideration of the record of the case by the Judge and hearing of the submissions on behalf of the accused and prosecution and passing of the order either framing charge or discharging the accused. It is now well settled by catena of the decisions of the Apex Court as well as by this Court that if the Judge wants to frame charge he may not pass a detailed order giving reasons but if he wants to discharge the accused he has to give detailed reasons for discharging the accused. Section 227

mandates consideration of the record and hearing of the prosecution as well as accused before passing an order framing charge or discharging the accused. Section 228 of the Code of Criminal Procedure contemplates considerations of the record and hearing of the accused for the purpose of finding out if there is ground for presuming that the accused has committed any offence. Thus, the opportunity of hearing is to be granted to the Prosecution as well as to the accused before framing of the charge.

11. I have gone through the order passed by the Special Judge as well as the reasons assigned. It reveals that the opportunity of hearing was not granted either to the Prosecution or to the accused.

12. In my view, on account of this, a fundamental defect has been crept in, the prosecution has come forward to remove the defect in the charge, and therefore, the criminal revision application deserves to be allowed. Accordingly, I proceed to pass following order:

(i) The application is allowed.

(ii) The framing of the charge against some of the accused and discharging the 12 accused by passing order

dated 14.09.2023 below Exhibit 1 is hereby quashed and set aside.

(iii) Learned Judge is directed to pass the appropriate order of framing of charge or discharging the accused after giving an opportunity of hearing to the prosecution as well as to the accused by complying the provisions of Section 227 of the Cr.PC.

13. The application stands disposed of. Rule made absolute in the aforesaid terms.

(URMILA JOSHI-PHALKE, J.)

**Divya*