



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO.1615 OF 2025

Shri Omprakash Shobharam Gawhane
Aged about 66 years, Occu.: Business,
R/o Bhagat Singh Ward, Ramtek,
Tahsil Ramtek, District Nagpur.

... APPLICANT

...VERSUS...

1. State of Maharashtra,
Through Police Station Officer,
Police Station Ramtek, Nagpur.
2. Shri Dnyaneshwar Marotrao Mahadule
Aged about 54 years, Occu.: Service,
R/o Bhagat Singh Ward, Ramtek,
Tahsil Ramtek, District Nagpur.
3. Smt. Kamlabai Marotrao Mahadule
Aged about 75 years, Occu.: Business,
R/o Bhagat Singh Ward, Ramtek,
Tahsil Ramtek, District Nagpur.
4. The Superintendent of Police,
Nagpur Rural, Civil Lines, Nagpur.
5. Inspector General of Police,
Nagpur Range, Civil Lines, Nagpur.
6. Director General of Police,
Maharashtra State, Mumbai.
7. Principal Secretary,
Ministry of Home, Maharashtra State,

Mantralaya, Mumbai-400032.

8. Principal Secretary,
Ministry of Home, Union of India,
Ministry of Home Affairs, North Block
Raisina Hill, New Delhi.
9. Shri Sanjay Khobragade,
Police Sub Inspector, Police Station,
Ramtek, District Nagpur.

...NON-APPLICANTS

Shri A.C. Khare, Advocate for applicant
Shri N.B. Jawade, APP for non-applicant Nos. 1, 4 to 7/State
Shri A.S. Dhore, Advocate for non-applicant Nos. 2 & 3

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

RESERVED ON : 28.11.2025
PRONOUNCED ON : 11.12.2025

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

Heard. **Admit.** Heard finally with the consent of learned
Counsel for both the parties.

2. This is an application for quashing and setting aside the First
Information Report bearing Crime No. 0296/2022, lodged on
31.05.2022, and the consequent charge-sheet bearing No.
136/2022, dated 15.09.2022, for the offences punishable under

Sections 181, 182, 193, 424, 431, and 489 of the Indian Penal Code, read with Section 3 of the Prevention of Damage to Public Property Act, 1984, as also, Regular Criminal Case No. 97/2022, pending on the file of Judicial Magistrate First Class, Ramtek, District Nagpur.

3. Brief facts as pleaded in the application are as under :

The father of the applicant herein filed a suit for declaration, injunction, and removal of encroachment against the non-applicant Nos. 2 and 3 bearing R.C.S. No. 15/2005, before the Civil Judge Junior Division, Ramtek. The said suit was dismissed on 12.03.2012. The original plaintiff, who is the father of the applicant herein, challenged the said judgment and decree by filing an appeal before the District and Sessions Court, Nagpur, bearing R.C.A. No. 710/2012, which came to be allowed on 12.01.2015. Thus, the Appellate Court decreed the suit and the defendants in the suit i.e., the non-applicant Nos. 2 and 3 herein, were directed to remove encroachment from the suit property. Being aggrieved, the non-applicant Nos. 2 and 3 filed a Second Appeal before this Court bearing Second Appeal No. 257/2015. However, the same was

rejected vide order dated 05.01.2017. The non-applicant Nos. 2 and 3 chose to challenge the said before the Hon'ble Supreme Court of India, by filing a Special Leave Petition, SLP(C) No.14094/2017, which was also dismissed on 05.05.2017.

4. In the backdrop of these facts, and more particularly, the order of mandatory injection directing the non-applicant Nos. 2 and 3, to remove the encroachment as per the plaint map had attained finality. The non-applicant No. 2, however, chose to file another suit bearing R.C.S. No. 876/2018, before the Civil Judge Senior Division, Nagpur, for a declaration that the judgment and decree dated 12.01.2015 passed in RCA No. 710/2012, being declared null and void and not executable. In the said matter, the applicants herein filed an application under Order 7, Rule 11 of the CPC for rejection of the plaint, which came to be allowed by the Court on 17.03.2021. The non-applicant Nos.2 and 3, along with one Suresh Mahadule, chose to challenge the said order/judgment on 18.06.2021, by filing a Regular Civil Appeal bearing No. 85/2021.

5. It is pertinent to mention here that during the pendency of

the said appeal filed at the behest of the non-applicant Nos. 2 and 3, they chose to file a Criminal Miscellaneous Application No. 85/2020, before the Judicial Magistrate First Class, Ramtek. This application was filed seeking an enquiry under Section 156(3) of the Criminal Procedure Code, and was filed on 11.04.2022. The said Magistrate passed an order thereon, on 12.05.2022, directing the Officer in charge of the Police Station, Ramtek, to investigate the matter as per Section 156(3) of the Criminal Procedure Code and submit a report. Thereafter, the appeal bearing R.C.A. No. 85/2021, filed by the non-applicant Nos. 2 and 3, challenging the rejection of the plaint, was ultimately rejected on 29.08.2022.

6. In the backdrop of these admitted facts, the First Information Report came to be registered on 31.05.2022, at the behest of the non-applicant No. 2. As per the said First Information Report, the applicants herein have deliberately and intentionally dumped construction waste while constructing a new house over the public well, due to which, the said public well is no longer in existence. It is further alleged that the applicants have given false statements on oath, as also false information, with the intent to cause a public

servant to use his lawful power to the injury of another person. It is further stated that they have played a mischief by causing injury to the public road. On these allegations, the First Information Report in question was lodged, which is being challenged in the present application.

7. We have heard Shri Amit Khare, learned Counsel for the applicant, Shri NH Joshi, learned Additional Public Prosecutor, learned Additional Public Prosecutor for the non-applicants/Stae, as also, Shri Anup Dhore, learned Counsel for the non-applicant Nos.2 and 3.

8. Learned Counsel for the applicant submits that the First Information Report in question is nothing but a gross abuse of the process of the Court. Since the issue for which the First Information Report is lodged has attained finality till the Hon'ble Supreme Court. By taking us through various orders/judgments which were previously litigated by the parties, the learned Counsel for the applicant submits that the subject matter of the First Information Report is exactly identical to the suit filed by his father and wherein

a decree for removal of encroachment is passed. He further submits that the First Information Report and the consequent criminal proceedings are thus an abuse of process of the Court and liable to be quashed.

9. Opposing the submissions made by the learned Counsel for the applicant, the learned Additional Public Prosecutor submits that, even if, previous litigation between the parties is concerned, a conjunctive reading of the averments made in the application makes out an offence under the various sections, as mentioned in the First Information Report. He further submits that a legitimate criminal trial cannot be nipped in the bud, and the same would require a full-fledged trial.

10. Learned Counsel for the non-applicant No. 2, while supporting the learned Additional Public Prosecutor, states that the averments in the First Information Report make out a case triable by the Competent Court, and therefore, this would not be a fit case to exercise inherent jurisdiction.

11. In the backdrop of these facts, we have perused the previous

litigation between the parties, as also the First Information Report in question. It is a matter of record, and as can be seen from the judgment of the District Judge – 12, Nagpur, in RCA No. 710/2012, that the non-applicant Nos. 2 and 3 herein were directed to remove the encroachment as shown in the plaint map. The said decree of removal of encroachment has attained finality since the challenge to the same has proved unsuccessful till the Hon'ble Apex Court.

12. On perusal of the application filed by the non-applicant Nos. 2 and 3, before the Judicial Magistrate First Class, Ramtek, it can be seen that, even though, the earlier decree of encroachment had attained finality, and even though they themselves had filed a suit challenging the said judgment and decree in which the plaint was rejected, all these facts were suppressed while obtaining the order of the Magistrate. Thus, it is non-applicant Nos. 2 and 3, who had played mischief on the Court and had grossly abused the process of the Court. It seems that the Police have registered the First Information Report on the basis of order of the Judicial Magistrate First Class.

13. Apart from that, the suppression of facts regarding the issue of encroachment being attained finality is, as stated supra, viewed with a serious nature.

14. Even on merits, a bare perusal of the complaint leading to lodging of the First Information Report would reveal that it is nothing but vagueness documented. The Police Officers have mechanically registered the First Information Report. Even the various statements recorded by the Investigating Agency during investigation do not reveal anything incriminating against the present applicants.

15. As far as offence under Section 181 and 182 of the Indian Penal Code are concerned, there is no ingredient of the said offence on a meaningful reading of the First Information Report. It is so since the judgments/orders between the parties inter se is a matter of record. Furthermore, it is not even the case of the first informant that the applicants have given false evidence so as to attract offence under Section 191 of the Indian Penal Code. Likewise offence under Section 424 is also not attracted since there is no dishonest or

fraudulent removal or concealment of property. Same applies to offence under Section 439 of the Indian Penal Code.

16. As far as offence under Section 489 of the Indian Penal Code is concerned, the issue has attained finality.

17. As far as Section 3 of the Prevention of Damage to Public Property Act, 1984, is concerned, the same has also attained finality in view of the order of this Court and confirmed by the Hon'ble Apex Court.

18. The situation would squarely fall within the parameters of the ***State of Haryana and others Vs. Bhajanlal and others, 1992 Supp (1) SCC 335***, and more particularly Clause 1, 3, and 7 thereof :

“102.....

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) ...

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4)

(5) ...

(6) ...

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

19. In that view of the matter, we pass the following order :

ORDER

- i) The application is allowed.
- ii) The First Information Report bearing Crime No. 0296/2022, lodged on 31.05.2022, and the consequent the consequent charge-sheet bearing No. 136/2022, dated 15.09.2022, for the offences punishable under Sections 181, 182, 193, 424, 431, and 489 of the Indian Penal Code, read with Section 3 of the Prevention of Damage to Public Property Act, 1984, as also, Regular Criminal Case No. 97/2022, pending on the file of Judicial Magistrate First Class, Ramtek, District Nagpur, are quashed and set aside to the extent of the applicant – Shri Omprakash Shobharam Gawhane.

iii) The non-applicant Nos. 2 and 3 to jointly pay costs of Rs. 50,000/- within 2 weeks from the date of receipt of the order.

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

v) We direct the learned Additional Public Prosecutor to forward a copy of this order to the Police Station Officer, Ramtek, who, in turn, is further directed to serve a copy on the non-applicant Nos. 2 and 3, and submit a compliance report to this Court.

20. The application is disposed of in the above terms.

(NANDESH S. DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

Jayashree..