2026:BHC-AUG:46389

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 76 OF 2025

Prakash Ashokrao Markad
Age: 43 years, Occu.: Medical Practitioner,
R/o. Shinde-Shiginagar, Bhabanagar Road,
Kopargaon, Tq.Kopargaon,
District Ahmednagar. ….Applicant

Versus

Jyoti Chandrakant Kasaliwal
Age: 47 years, Occu.: Household,
R/o. C/o. Vimal Photo Studio, Main Road,
Kopargaon, Tq.Kopargaon,
District Ahilyanagar. …..Respondent

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Mr.Satyam Kumar h/f. Mr.Chandrakant R.Thorat, Advocate for Applicant.
Ms.Rani Bharuka - Bora h/f. Mr. Satyajit S. Bora

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 23-09-2026
Pronounced on : 05-10-2026

ORDER :

1. Original complainant, who is primarily dissatisfied by impugned judgment and order dated 19-12-2024 passed by learned Additional Chief Judicial Magistrate, Kopargaon, thereby acquitting respondent from charge under Section 420 of the Indian Penal Code (IPC), has preferred instant application seeking leave to file appeal.

2. Applicant instituted a private complaint bearing R.C.C. No.126 of 2012 on the premise that, respondent/original accused cheated

and defrauded him by executing a sale deed and selling a plot, which was already under attachment by the Court order. On receipt of above private complaint, learned trial Court issued process and called upon respondent/accused to answer the charge. On appreciating the evidence available on record, the learned trial Court acquitted the accused. Hence, instant application for leave to file appeal.

3. Learned counsel for applicant pointed out that, applicant had proved before learned trial Court that accused projected that plot was free from encumbrance and there was clear title. That, accused accepted amount. However, accused had suppressed the fact of said plot to be mortgaged and encumbered with Bank, which later on i.e. after sale deed, and after complainant erected house, initiated action of attachment of the property. According to learned counsel, act of accused was deliberate and inspite of being aware of encumbrance. That, there was element of cheating, but learned trial Court failed to consider and appreciate the same and acquitted accused. He submitted that, there is a good case but in appeal and so he seeks leave to file appeal.

4. Learned counsel for respondent/original accused justified the order of acquittal by pointing out that, the attachment proceedings

were subsequent to the sale deed. That, accused was not aware of the action of the Bank. That, there was no cheating or defrauding accused. Therefore, learned counsel prays for rejection of application.

5. Perused the record. There is no dispute that accused was owner of a plot and complainant was desirous of purchasing it and therefore, sale deed was executed on 01-07-2010. It was a registered sale deed. Complaint was at the instance of applicant and therefore, obviously there was burden on him to prove the accusations and allegations of cheating. However, his cross-examination shows that he has admitted that the plot in question was not attached prior to the purchase and rather attachment proceedings were subsequent to purchase. It has also come in his evidence that after the sale transaction, name of complainant was reflected in the revenue record and thereafter, he had also obtained permission to construct the house and the same was also granted and he erected the house. Apparently, the attachment proceedings are in consequence to Darkhast. Complainant also admitted that, he did not challenge the order of attachment.

6. It appears that present respondent/accused was mere a guarantor and she had not mortgaged the said plot. As the principal

borrower seems to have failed to repay loan in Darkhast proceedings, the decree holder rather than seeking attachment of property of borrower, who was principal borrower, had proposed attachment of a plot of respondent/accused and in such proceedings orders seems to have passed.

7. In view of nature of allegations of cheating, it is incumbent upon complainant to show that accused, since inception, had the intention to cheat. This requirement is primarily missing from above evidence. When once complainant has admitted that prior to purchase of plot, he had taken all due steps to ascertain clear title and thereafter, entered into sale agreement, role of accused does not remain. For above reasons, offence under Section 420 of the IPC is not made out by complainant. There is nothing to show that accused was aware of the attachment proceedings but still she entered into sale transaction. On the contrary, evidence on record shows that at the time of sale transaction, there was clear title with accused.

Resultantly, essential ingredients for attracting charge under Section 420 of the IPC being missing, learned trial Court has made no error in acquitting accused. As no good ground is made out for granting leave, application deserves to be rejected. Accordingly, following order is passed :

ORDER

Application is rejected.

[ABHAY S. WAGHWASE, J.]

SPT