

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 143 OF 2026

Vijay Ashok Lakhi. ... Petitioner.

V/s.

The State of Maharashtra. ... Respondens.

Mr. Mohd. Saeed Moghul, a/w. Ms. Deepa Panicker, Mr. Azhar Shaikh, Advocate for Petitioners.

Mr. Prasanna Malshe, APP for Respondent/State.

IO PSI Shedge Aniket, Gamdevi Police Station, Mumbai.

CORAM : ASHWIN D. BHOBE, J.

DATE : 21st JANUARY, 2026.

P.C. :

1. Heard, Mr. Mohd. Saeed Moghul Advocate for Petitioners and Mr. Prasanna Malshe, learned APP for the State.

2. By this petition filed on 12.12.2025, under Article 226 of the Constitution of India and Section 528 of the Bharatiya Nagarik

Suraksha Sanhita, 2023, Petitioner assails :- (a) the FIR bearing No. 436 of 2022, dated 03.11.2022 registered at Gamdevi Police Station against the Petitioner for the offences punishable under Sections 420, 465, 467, 468, 471 and 511 of Indian Penal Code; and (b) the Order dated 04.10.2024 passed by the 40th J.M.F.C Court at Girgaon, Mumbai in C.C No.PW/55/2024 framing of charge against the Petitioner.

3. The material facts required for adjudication of this Petition are that :-

(a) On 13/06/2022, Biharilal Mathuradas Lakhi (“Biharilal”) lodged a complaint before the Respondent No. 1 alleging the Petitioner of forging his signature on the request letter for transferring 2100 shares of HDFC Limited held by Biharilal, to the Petitioners account with Saraswat Bank Khar Branch. Relevant portion of the complaint dated 13.06.2022 are extracted herein below :

" दि.०२/०५/२०२२ रोजी दुपारी १२:०० वा सुमारास माझा नातु नाम श्री विजय अशोक लाखी वय ४० वर्षे हा आमचे राहते घरी आला. सदरवेळी माझी पत्नी श्रीमती मनी बिहारीलाल लाखी वय ८२वर्षे ही परी होती. त्यावेळी माझा नातु नामे श्री विजय अशोक लाखी वय ४० वर्षे याने वरनमुद प्लॅटचे मेन्टेनेन्स भरणेकामी बचत खात्यातून चेक द्यावे लागतील असे सांगितले. त्यावेळी मी

अशोक यास आता मी कोणताही व्यवहार करणार नाही अपवा कोणताही चेव सही करून देणार नाही असे सांगून नी भाझा चुलत भाउ नामे श्री वासुलाल नारायणदास लाखी वय ८० वर्षे यास घरी बोलावून घेतले. माझा चुलत भाउ घरी आल्यानंतर मी माझी पत्नी व चुलत भाउ वासुलाल याचे समक्ष माझे सहीचे दोन चेक माझा नातु नामे अशोक लाखी याम पुष्पवाटीका को-ही. सोसायटी येथील प्लॅटचे मेन्टेनन्स भरण्याकरीता दिले.

दि.०४/०५/२०२२ रोजी मी माझा चुलत भाउ वासुलाल यास त्वर नमुद (प्लॅटचे मेन्टेनन्सकरीता दिलेले चेकची रक्कम बचत खात्यातुन वजा झाली किंवा कर्म ? यांकरीता पंजाब नॅशनल बँक, पेडर रोड शाखा येथे पाठविले. त्यावेळी माझा चुलत भाउ वासुलाल यांने डिमेट खात्यातील शेअर्स बाबत सुध्दा चौकशी केली असता नमुद खात्यात सध्या एकुण २१०० शेअर्स असल्याबाबत बँक कर्मचाऱ्यांनी त्यास सांगितले. त्यावेळी बँक कर्मचारी यांनी नमुद डिमेट खात्यातील शेअर्स हस्तांतरणाबाबत विजय लाखी यांनी पत्रव्यवहार केलेला असून नमुद डिमेट खात्यातील शेअर्स हे विजय अशोक लाखी वय ४० वर्षे यांचे सरस्वती बँक, खार शाखा येथे हस्तांतरण होतील. त्यावर माझे चुलत भाउ वासुलाल लाखी यांने नकार देवून त्यांना सदर हस्तांतरणाबाबत कोणताही पत्रव्यवहार किंवा अर्ज केलेला नाही अशी माहीती बँक मॅनेजर अशोक यांना दिली. त्यावर बँक मॅनेजर श्री अशोक यांने तात्काळ मला फोन करून सदर हस्तांतरणाबाबत पत्रव्यवहार हा माझे सहीने केला असल्याचे सांगितले त्यावर मी बँक मॅनेजर अशोक यांना हस्तांतरणाबाबत माझेकडून कोणताही पत्रव्यवहार केलेला नसल्याबाबत सांगितले. त्यावर माझे बनावट सहीने पत्रव्यवहार करून शेअर्स हस्तांतरण होत असल्याचा मला संशय आल्याने मी तात्काळ माझा चुलत भाउ वासुलाल यांस घरी बोलावून सदर डिमेट खाते गोठविण्याकरीता पंजाब नॅशनल बँक, पेडर रोड शाखा येथे विनंतीपत्र दिले.”

“emphasis supplied”

(b) FIR bearing No. 436 of 2022, was registered at Gamdevi Police Station on 03/11/2022.

(c) During the course of investigation, the statement of the Krishna Kunal Shankar, Management Trainee, Punjab National Bank was recorded on 16.06.2022. Relevant portion

of the statement of Krishna Kunal Shankar is extracted herein below:

" त्यानंतर मी माझे मॅनेजमेंट ट्रेनी श्री अशोककुमार चेडला यांना सदरबाबत माहिती देवून श्री विजय साखी यांनी केलेल्या पत्रव्यवहाराबाबत माहिती देवून शेअर्स हस्तांतरण अदयाप पर्यंत हस्तांतरण झाले नाहीत याबाबत माहिती दिली त्यानंतर श्री अशोक यांनी येक ऑफीसला सदरबाबत विचारणा केली असता सदरवेळी बँक ऑफीसमधील कर्मचारी यांनी माहिती दिली की, सदर पत्रव्यवहाराबाबतची प्रत प्राप्त झाली नसून सदर हस्तांतरणाबाबत त्यांना काही माहिती नाही. सदरवेळी मी श्री विजय लाखी फोन करून माहिती दिली की, नेवीजन्सी रोड येथील शाखेमध्ये शेअर्स ईन्ट्री केली जातील पेडर रोड शाखेकडे सदरबाबत कोणतेही अधिकार नाहीत त्यांवर श्री विजय लाखी माझेवर चिडून बोलू लागले. सदरबाबत मी श्री अशोक यांना माहिती दिली व त्यानंतर श्री अशोक यांनी बिहारीलाल यांना फोन करून सर्व माहिती दिली.

तरी श्री विजय लाखी यांनी आमचे पंजाब नॅशनल बँक, पेडर रोड शाखा मधील डिमेट खाते क.०२८३२००१०००००६९७ मधील एकुण २१०० शेअर्स हे त्यांचे नावावर करणेबाबत सरस्वती बँक, खार शाखा येथील खात्यात हस्तांतरण करण्याबाबत त्याचे सहीने पत्रव्यवहार केला आहे."

(d) Document (Form 36- Combined Delivery Instructions by Client) on which the signature of Biharilal is alleged to be forged is at page no. 105 of the paper book. Letter dated 27.06.2022 of Punjab National Bank informing Biharilal of the Petitioner having submitted the Form 36- Combined Delivery Instructions by Client on which signature of Biharilal does not tally with the Bank records is at page no. 130 of the paper book.

(e) Upon completion of investigation, charge-sheet came to be filed against the Petitioner, which was registered as C. C. No. 55/PW/2024 and committed to the Court of the Judicial Magistrate First Class, 40th Court, Girgaon, Mumbai (“Magistrate”).

(f) Magistrate framed charge vide Order dated 04.10.2024 under Section 420, 465, 467, 468, 471 and 511 of the Indian Penal Code.

(g) Plea of the Petitioner was recorded on 04.10.2024 wherein the Accused pleaded “not guilty” and claimed to be tried.

(h) Proceedings before the Magistrate are at the stage of evidence.

4. Mr. Mohd. Saeed Moghul, learned Advocate for the Petitioner has canvassed the following arguments:-

a) Biharilal expired on 30.10.2022. He therefore

submits that the FIR which is registered on 03.11.2022 is void ab initio. To clarify he submits that the FIR registered on a complaint of a dead person has no legal value.

b) By referring to Section 154 of the Code of Criminal Procedure, 1973 he submits that every information relating to commission of cognizable offence, is required to be reduced in writing and should be signed by the person giving it. He submits that Biharilal was dead as on 03.11.2022 as such the FIR does not bear the signature of Biharilal. He submits that a dead person (Biharilal) could not set the criminal law in motion. He submits that the FIR dated 03.11.2022 is a nullity.

c) He by referring to para 5 of the order dated 02.12.2022 passed by the Court of Sessions for Greater Mumbai at Mumbai (“Sessions Court”) in Anticipatory Bail Application No. 2487 of 2022 (at page 24 to 26 of

the paper book), which reads as : “5. *On perusal of allegation in FIR and say of police, it is clear that shares of informant are not transferred by the bank on the basis of alleged offence. Therefore, offence of cheating is not completed. If any letter is forged, that may be required by police. For that purpose, applicant may be directed to appear before police and in view of such circumstances, there is no need of custodial interrogation of applicant. Therefore, in my opinion applicant may be released on bail in the event of his arrest.*” submits that the said findings are binding. He relying on the said findings submits that once offence under section 420 of the Indian Penal Code is not made out there was no question of the Police registering the FIR dated 03.11.2022 under Section 465, 467, 468, 471 and 511 of the Indian Penal Code. He submits that once the findings of the Sessions Court in Anticipatory Bail Application No. 2487 of 2022 were brought to the notice of the Magistrate, charge could not be framed against the Petitioner.

(d) He submits that charge under Section 420 of the

Indian Penal Code could not be framed as there was no transfer of shares in favour of the Petitioner.

5. Mr. Prasanna Malshe, learned APP submits that the allegations in the complaint filed by Biharilal disclosed commission of a cognizable offence under section 420, 465, 467, 468, 471 and 511 of the Indian Penal Code . He submits that the statements of witness and material collected during Investigation, produced along with the charge-sheet makes out a case against the Petitioner. He submits that the Magistrate upon considering the material has rightly framed the charge. He submits that the charge was framed on 04.10.2024. He submits that there is no explanation for the delay in filing this petition.

6. Perused the records with the assistance of the learned Advocates.

7. Records of the case bear out that Biharilal on 13.06.2022 had in writing (at page nos. 38 & 39 of the paper book) informed the Police Officer, Gamdevi Police Station, commission of a

cognizable offence by the Petitioner. FIR bearing No. 436 of 2022, though registered on 03/11/2022 contains the following

Note:-

"दि. ०३/११/२२

जबाब

यातील फिर्यादी नामे श्री बिहारीलाल मथुरादास लाखी वय १० वर्ष, सेवानिवृत्त, राठि रुम नं. ६१, ६वा माळा, रिजुमल मेशन जसलोक हॉस्पिटलच्या मागे पेडर रोड मुं. २६ यांचा दिनांक १३/०६/२२ रोजी स्वतंत्र कागदावर जबाब संगणकावर टंकलिखित केला असून नमूद जबाबास नमूद गुन्हाची प्रथम खबर संबोधून गुन्हा कलम ४२०, ४६५, ४६७, ४६८, ४७१, ५११ भादवी अन्वये गुन्हा नोंद करण्यात आला.

दि. १३/०६/२२ फिर्यादीने दिलेल्या
प्रथम खबर म्हणून संबोधण्यात येत आहे

समक्ष

सही/-

रुपेश यशवंत वळंजु
पोलीस उपनिरीक्षक
गावदेवी पोलीस ठाणे, मुंबई"

(emphasis supplied)

8. The Hon'ble Supreme Court in the case of *Lalita v/s. Vishwanath & Ors.*¹. has in paragraph nos. 27 to 38 held as under:-

"27. Before we close this matter, we deem it necessary to explain one very important aspect of the procedural law so far as it relates to proving the contents of the First Information Report through the Investigating Officer. In other words, if the first informant has passed away before stepping into the witness box, then whether the contents of such First Information Report

1. 2025 SCC OnLine SC 370

can be proved through the evidence of the Investigating Officer and read into the evidence.

28. In the case on hand, as noted above, the First Information Report was lodged by the father of the deceased. However, before the father could step into the witness box, he passed away. In such circumstances, the Trial Court permitted the Investigating Officer to prove the contents of the First Information Report Exhibit-35 and read into evidence as per Section 67 of the Evidence Act.

29. The basic purpose of filing a First Information Report is to set the criminal law into motion. A First Information Report is the initial step in a criminal case recorded by the police and contains the basic knowledge of the crime committed, place of commission, time of commission, who was the victim, etc. The term 'First Information Report' has been explained in the Criminal Procedure Code, 1973 by virtue of Section 154, which lays down that:

"Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

30. F.I.Rs. can be registered by a victim, a witness or someone else with the knowledge of the crime. The police can record three different kinds of statements. The first kind of statement is one which can be recorded as an F.I.R., the second kind of statement is one which can be recorded by the police during the investigation, and the third kind of statement is any kind of statement which would not fall under any of the two categories mentioned above. Evidence is the matter of testimony manifesting the fact on a particular precision or circumstances. The First Information Report is not by itself a substantial piece of evidence and the statement made therein cannot be considered as evidence unless it falls within the purview of Section 32 of the Evidence Act. It is an admitted fact that the original first informant because of the injuries caused by the applicants. The relative importance of a First Information Report is far greater than any other statement recorded by the police during the course of the investigation. It is the foremost

information the police gets about the commission of an offence and which can be used to corroborate the story put-forward by the first informant under Section 157 of the Evidence Act or to contradict his version by facts under Section 145 of the Evidence Act in case he is summoned as a witness in the case by the Court. It may happen that the informant is the accused himself. In such cases, the First Information Report lodged by him cannot be used as an evidence against him because it is embodied in the basic structure of our Constitution that a person cannot be compelled to be a witness against himself.

31. *In certain cases, the First Information Report can be used under Section 32(1) of the Evidence Act or under Section 8 of the Evidence Act as to the cause of informant's death or as a part of the informant's conduct. Section 32 of the Evidence Act reads as under:—*

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

Statements, written or verbal, of facts in issue or relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose presence cannot be procured without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable, or who is kept out of the way by the adverse party, are themselves relevant facts in the following cases:”

(1) When it relates to cause of death : - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) Or is made in course of business : - When the statement was made by such a person in the ordinary course of business and, in particular, and without prejudice to the generality of the foregoing provisions of this clause, when it consists of any entry or memorandum made by him in books kept in the ordinary course of

business.

(2A) Or is made in discharge of professional duty etc.:— When the statement consists of an entry or memorandum made by such person in the discharge of professional duty or of an acknowledgement written or signed by such person in respect of the receipt of money, goods, securities or property of any kind, or of a document used in commerce, written or signed by him or of the date of a letter or other document usually dated, written or signed by him.

(3) Or against interest of maker:— When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

Explanation : A recital as regards boundaries of immovable property in document containing such statements, as to the nature or ownership or possession of the land of the maker of the statement or of adjoining lands belonging to third persons, which are against the interests of the maker of the statement, are relevant and it is not necessary that the parties to the document must be the same as the parties to the proceedings or their privies.”

(4) Or gives opinion as to public right or custom, or matters of general interest:— When the statement gives the opinion of any such person as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

(5) Or relates to existence of relationship:— When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship a [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) Or is made in will or deed relating to family affairs:—

When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) Or in documents relating to transactions mentioned in section 13, clause (a) : When the statement is contained in any deed, will or other document, being a deed, will or other document which relates to any transaction by which a right or custom was created, claimed, modified, recognized, asserted or denied or which was inconsistent with its existence, as mentioned in clause (a) of section 13.

Explanation I:— Such statement is relevant where the question in the proceeding now before the court is as to the existence of the right or custom or if such statement related to facts collateral to the proceeding and it is not necessary that the parties to the document must be the same as the parties to the proceeding or their privies.

Explanation II:— A recital as regards boundaries of immovable property in a document containing such statement, as to the nature or ownership or possession of the land of the maker of the statement or of adjoining lands belonging to third persons, shall be relevant and it is not necessary that the parties to the document must be the same as the parties to the proceeding or their privies.”

(8) Or is made by several persons and expresses feelings relevant to matter in question.-

When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations

(a) The question is whether A was murdered by B : or

(b) A dies of injuries received in a transaction in the course of which she was ravished.

The question is whether she was ravished by B : or The question is, whether A was killed by B under such circumstances that a suit would lie against B by As widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable were under consideration, are relevant facts.

(b) The question is as to the date of As birth.

An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at As orders, is a relevant fact.

(f) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married

them under such circumstances that the celebration would be a crime, is relevant.

(g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(h) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.”

32. *If the informant dies, the First Information Report can be, unquestionably, used as a substantive evidence. A prerequisite condition must be fulfilled before the F.I.R. is taken as a substantive piece of evidence i.e. the death of the informant must have nexus with the F.I.R. filed or somehow having some link with any evidence regarding the F.I.R. This is what has been explained by this Court in the case of Damodar Prasad v. State of U.P [(1975) 3 SCC 851 : AIR 1975 SC 757].*

33. *There are plethora of decisions taking the view that an F.I.R. can be a dying declaration if the informant dies of his injuries after lodging the same. [See Munna Raja v. State of M.P ((1976) 3 SCC 104 : AIR 1976 SC 2199)].*

34. *Another important thing is that for an F.I.R. lodged by a deceased person to be treated as substantial, its contents must be proved. It has to be corroborated and proved for there to be any value of the same in the case. The F.I.R. can be used by the defence to impeach the credit of the person who lodged the F.I.R. under Section 154(3) of the Evidence Act. In case the death of the informant has no nexus with the complaint lodged i.e. he died a natural death and did not succumb to the injuries inflicted on him in relation to a matter, the contents of the F.I.R. would not be admissible in evidence. In such circumstances, the contents cannot be proved through the Investigating Officer. The Investigating Officer, in the course of his deposition, should not be permitted to depose the exact contents of the F.I.R. so as to make them admissible in evidence. All that is permissible in law is that the Investigating Officer can, in his deposition, identify the signature of the first informant and that of his own on the First Information Report and he can depose about the factum of the F.I.R. being registered by him on a particular date on a particular police station.*

35. *It is absolutely incorrect on the part of the Trial Court and the High Court to say that in the absence of the first informant, the police officer can prove the contents of the F.I.R. as per Section 67 of the Evidence Act.*

36. *In the case of Harkirat Singh v. State of Punjab [(1997) 11 SCC 215 : AIR 1997 SC 3231], this Court observed as under:*

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“In our considered view, the High Court was not justified in treating the statement allegedly made by Kharaiti Ram during inquest proceedings as substantive evidence in view of the embargo of Section 162, Cr. P.C. Equally unjustified was the High Courts reliance upon the contents of the FIR lodged by Walaiti Ram who, as stated earlier, could not be examined during the trial as he had died in the meantime. The contents of the FIR could have been used for the purpose of corroborating or contradicting Walaiti Ram if he had been examined but under no circumstances as a substantive piece of evidence.”

37. *In the case of Hazarilal v. State (Delhi Administration) [(1980) 2 SCC 390 : AIR 1980 SC 873], this Court, in para 7, observed as under:—*

“The learned counsel was right in his submission about the free use made by the Courts below of statements of witnesses recorded during the course of investigation. Section 162 of the Code of Criminal Procedure imposes a bar on the use of any statement made by any person to a Police Officer in the course of investigation at any enquiry or trial in respect of any offence under investigation at the time when such statement was made, except for the purpose of contradicting the witness in the manner provided by S. 145 of the Indian Evidence Act. Where any part of such statement is so used any part thereof may also be used in the re-examination of the witness for the limited purpose of explaining any matter referred to in his cross-examination. The only other exception to this embargo on the use of statements made in the course of an investigation relates to the statements falling within the provisions of S. 32 (1) of the Indian Evidence Act or permitted to be proved under Section 27 of the Indian Evidence Act. Section 145 of the Evidence Act provides

that a witness may be cross-examined as to previous statements made by him in writing and reduced into writing and relevant to matters in question, without such writing being shown to him or being proved but, that if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The Courts below were clearly wrong in using as substantive evidence statements made by witnesses in the course of investigation. Shri. H.S. Marwah, learned counsel for the Delhi Administration amazed us by advancing the argument that the earlier statements with which witnesses were confronted for the purpose of contradiction could be taken into consideration by the Court in view of the definition of “proved” in Section 3 of the Evidence Act which is, “a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man, ought, in the circumstances of the particular case to act upon the supposition that it exists”. We need say no more on the submission of Shri. Marwah except that the definition of proved does not enable a Court to take into consideration matters, including statements, whose use is statutorily barred.”

38. *We have to our benefit a very lucid and erudite judgment of the Madhya Pradesh High Court in the case of Umrao Singh v. State of M.P [1961 Cri LJ 270]. In this case, the petitioners Umrao Singh and Kunwarlal were convicted of the offence punishable under Section 323 of the Penal Code and sentenced to two months rigorous imprisonment. The case of the prosecution was that on 27th August 1959, the petitioners named above belaboured Barelal who had gone out to graze his cattle, and who was blamed by the accused to have caused damage to their crops. Barelal, however, died a natural death after six months of the occurrence, but before he could be examined as a witness. It was contended that the F.I.R. lodged by Bare-lal could not be considered by the Courts below and that the evidence of the solitary witness, Pannala was unreliable, as he was not mentioned in the list of witnesses filed by the prosecution. In this set of facts, the Court observed as under:—*

“4. It is true that the first information report is not by itself a substantive piece of evidence and the statement made therein cannot be considered as evidence unless it

falls within the purview of S. 32 of the Evidence Act. It is an admitted fact that Barelal did not die because of the injuries caused by the petitioners. Section 32 was inapplicable.

5. It is true that in the list of witnesses Pannalal's name has been mis-spelt as 'Dhannalal', but this doubt is removed when the first information report is looked into. There, Pannalal's name is mentioned. Shri. Dey contends that it is not permissible to look at the F.I. R. at all. In my opinion this argument cannot be accepted. It is proved by Ram Ratan PW. 6 that he recorded the report which was lodged by Barelal. There is a distinction between factum and truth of a statement. It has been aptly pointed out by Lord Parker C.J. in R. v. Willis [1960] 1 WLR 55 that evidence of a statement made to a witness by a person who is not himself called as witness may or may not be hearsay.

It is hearsay and inadmissible when the object of the evidence is to establish what is contained in the statement; it is not hearsay and is admissible when it is proposed to establish by the evidence not the truth of the statement but the fact that it was made. According to Ram Ratan, Barelal mentioned Pannalal's name to him. Applying the above dictum, Ramratan's evidence is inadmissible to prove that Pannalal was in fact present at the time of the occurrence; but Ram Ratan's statement is admissible to prove that Barelal had mentioned the name of Pannalal to the witness."

9. In the instant case, the allegation made in the FIR dated 03.11.2022 read with the complaint dated 13.06.2022 taken at their face value and accepted in its entirety prima facie constitutes the offense charged against the Petitioner. Evidence collected in support of the said allegations discloses the commission of the offense and a case against the Petitioner. Involvement of the

Petitioner in making a false document with intent to transfer the 2100 shares held by Biharilal to Petitioner's Account is prima facie made out.

10. Statements of the witnesses and the documents viz. Form 36-Combined Delivery Instructions by Client and the letter dated 27.06.2022 of Punjab National Bank, raises strong suspicious circumstances against the Petitioner for framing charge against the Petitioner. Material on record disclose all the ingredients constituting the alleged offense/s and prima facie evidencing the truthfulness of the allegations. The Magistrate after considering the material on record has arrived at a prima facie finding of there being sufficient material to proceed against the accused for the offence punishable under section 420, 465, 467, 468, 471 and 511 of the Indian Penal Code. I do not find any perversity in the Order dated 04.10.2024 framing charge.

11. It is trite law that the opinion expressed or arrived at, by the Court while deciding a Bail Application is not binding at the time of considering the case on merits. Mr. Mohd. Saeed Moghul was

unable to substantiate his contention that finding in the order granting bail to have binding effect on the proceedings at the subsequent stage.

12. For all the aforesaid reasons, I am unable to accept the contentions urged by Mr. Mohd. Saeed Moghul Advocate for the Petitioner. No case is made out for interference. This Petition is devoid of merits as such dismissed.

13. There shall be no order as to costs.

(ASHWIN D. BHOBE, J.)