



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

CRIMINAL APPLICATION (APL) NO. 2002 OF 2025

Gajanan Ukhanda Mhasaye,
Age 57 Years, Occ. Service,
R/o Plot No.18, New Yashwant
Nagar, Hinganghat, District Wardha. **APPLICANT**

Versus

State of Maharashtra,
Thr. Police Station Hinganghat,
District Wardha. **NON-APPLICANT**

WITH

CRIMINAL APPLICATION (APL) NO. 2001 OF 2025

Ramesh Ukharda Masaye,
Age 51 Years, Occ. Service,
R/o Chhatrapati Chowk, Nagpur. **APPLICANT**

Versus

State of Maharashtra,
Thr. Police Station Hinganghat,
District Wardha. **NON-APPLICANT**

Mr. S.S. Joshi, Advocate for the Applicant in APL No.2002/25.
Mr. V.M. Vishwarupe, Advocate for the Applicant in APL
No.2001/25.
Mr. A.M. Kadukar, APP for the Non-applicant/State.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 18th FEBRUARY, 2026.

ORAL JUDGMENT :-

1. Heard.

2. **ADMIT.** Heard finally by the consent of learned Counsel for the respective parties.

3. Both these Applications are filed by the accused Nos. 1 and 2 for quashing the order passed by the Judicial Magistrate First Class, Court No.3, Hinganghat, District Wardha below Exh. 72 i.e. the discharge application filed under Section 239 of the Code of Criminal Procedure (for short “Cr.PC.”) rejecting the said application vide order dated 21.10.2022 and the judgment and order passed by the Additional Sessions Judge, Hinganghat in Criminal Revision Application No.27/2022 dated 28.03.2023, by which the order passed by the Judicial Magistrate First Class, Court No.3, Hinganghat, District Wardha, is maintained and discharge application is rejected.

4. The brief facts which are necessary for the disposal of the present Applications are as under:

4(i). On 11.06.2016, the Informant Subhash Katkhede lodged written report with Police Station Hinganghat alleging

that the present Applicants in furtherance of their common intention deceived him and his wife to the tune of 18,13,000/-. It is alleged that, the accused No.2/Ramesh had entered into an agreement to sell agricultural land bearing Survey No.191, admeasuring 3.28 HR situated at Mouza Murpad, Tah. Hinganghat, District Wardha with Informant and his wife on 15.04.2013 for a consideration of amount of Rs.17,41,844/-. The said land was in the name of one of the accused Manoj Gulabrao Kuthe on revenue record. Said Manoj Gulabrao Kuthe had entered into an agreement to sell the said land with accused No.2/Ramesh and accused No.1/Gajanan had signed the said agreement in the place of accused No.2/Ramesh. Informant had paid Rs.4,00,000/- to accused No.1/Gajanan in presence of the accused No.4 Gajanan Vitale. It is alleged that accused No. 4/Gajanan Vitale had instigated the Informant to purchase the said land and on the say of accused No.1 Informant has paid huge amount to accused No.3/Manoj Kuthe and got executed the sale deed in his favour and in favour of his wife vide documents Nos.3815 and 3816 dated 11.11.2013.

4(ii). It is further alleged that, when Informant applied for mutation, at that time he came to know that the said land was

Bhudan Land and by order of Sub-Divisional Officer Hinganghat, the said land has been forfeited to Government. It is further alleged that, the Informant requested the present Applicants and other co-accused to return the amount paid by him but they avoided. It is further alleged that, the present Applicants as well as other co-accused have deceived Informant to the tune of Rs.18,13,000/-. On the basis of the said report, Hinganghat Police registered FIR bearing Crime No.815/2016 for the offences punishable under Sections 420, 468, 471 read with Section 34 of Indian Penal Code (for short “IPC”).

5. After registration of the crime, the wheels of investigation started rotating. During investigation the Investigating Officer has recorded the relevant statements of witnesses and also collected various documents and after completion of the investigation, the charge-sheet was submitted against the accused.

6. Being aggrieved with the fact of filing of the charge-sheet against the present Applicants they have preferred an application under Section 239 of Cr.P.C., for discharging them on the ground that there was no intention apparent from

the entire charge-sheet since inception, and therefore, the offence punishable under Section 420 of IPC is not made out. The further ground raised is that the entire revenue record nowhere shows that the land was Bhudan Land, and therefore, there was no source of information to the present Applicants that the land is Bhudan Land. However, the learned Trial Court has not considered the same and the Investigating Officer has also not considered the same and filed the charge-sheet without having any evidence against them.

7. The learned Magistrate has considered the entire investigation papers and come to the conclusion that there is sufficient material to show that the present Applicants have entered into an agreement with the Informant by joining hands with each other, and therefore, at this stage there is sufficient evidence to frame the charge and rejected the Application.

8. Being aggrieved and dissatisfied with the said judgment and the said order of the Judicial Magistrate First Class, the Applicants have preferred the Revision alongwith the other co-accused. The learned Sessions Judge has considered the entire aspect and observed that, on perusal of record, it

appears that the Applicants have challenged the order whereby the learned Trial Court rejected their application for discharge. It is contention of the Applicants that they have no concern with the alleged forgery and cheating. On perusal of impugned order, it appears that, the learned Trial Court held that there is sufficient evidence against applicants for framing charge for offences punishable under Sections 420, 468 and 471 of IPC. All the offences are serious in nature and prescribed severe punishment and thereby rejected the Application and maintained the order of Judicial Magistrate First Class.

9. Being aggrieved and dissatisfied with the same the present Applications are filed by the present Applicants i.e. the accused Nos. 1 and 2 in the charge-sheet.

10. Before entering into merits of the case, it is necessary to see what are the considerations for considering the application for discharge.

11. It is a settled principle of law that at the stage of considering an application for discharge, the Court must proceed on the assumption that the material which has been

brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

12. The Hon'ble Apex Court in the case of ***State of Gujarat Vs. Dilipsinh Kishorsinh Rao, MANU/SC/1113 2023***, advertent to the earlier propositions of law in its earlier decisions in the cases of ***State of Tamil Nadu Vs. N.Suresh Rajan & Ors., (2014) 11 SCC 709***, ***The State of Maharashtra Vs. Som Nath Thapa, (1996) 4 SCC 659*** and ***The State of MP Vs. Mohan Lal Soni, (2000) 6 SCC 338***, has held as under:

*“10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in State of **Tamil Nadu vs. N.Suresh Rajan and ors, (2014) 11 SCC 709** advertent to the earlier propositions of law laid down on this subject has held:*

“29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is

trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

13. Thus, the defence of the accused is not to be looked into at this stage when the application is filed for discharge. The expression “the record of the case” used in Section 227 of the Code of Criminal Procedure is to be understood as the documents and materials, if any, produced by the prosecution. The provisions of the Code of Criminal Procedure does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency. The primary consideration at the stage of framing of charge is

the test of existence of a *prima facie* case, and at this stage, the probative value of materials on record need not be gone into. At the stage of entertaining the application for discharge under Section 227 of the Code of Criminal Procedure, the court cannot analyze or direct the evidence of the prosecution and defence or the points or possible cross examination of the defence. The case of the prosecution is to be accepted as it is.

14. In the case of ***Union of India Vs. Prafulla Kumar Samal & Anr., (1973) 3 SCC 4***, the Hon'ble Apex Court considered the scope of Section 227 of the Code of Criminal Procedure. After advertent to the various decisions, the Hon'ble Apex Court has enumerated the following principles:

“(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion

against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

15. With the above principles the material in the present case collected during the investigation is required to be considered.

16. Heard Mr. Joshi, learned Counsel for the Applicant in Criminal Application (APL) No.2002/2025 and Mr. Vishwarupe, learned Counsel for the Applicant in Criminal Application (APL) No.2001/2025. They have invited my attention towards the summary of charge-sheet and submitted that except the allegation that they entered into an agreement with the Informant with the help of other co-accused, there is no other allegation either they have forged any document or they have assisted the other accused in forging the documents apparent from the charge-sheet. They have also invited my attention towards the various documents i.e. 7/12 extract as

well as the order passed by the Sub-Divisional Officer in Case No.01-LEN-39/2015-16 dated 14.03.2016 and the report of Talathi and submitted that none of these documents shows that the land was termed as Bhudan Land. On the contrary, the revenue record shows that the land is neither coming under the Ceiling Act nor under the caption of Adiwasi Land nor under the Bhudan Land. Thus, none of the documents are showing that the said land was a Bhudan Land, and therefore, there is no reason for the Applicants to know the fact that the land was a Bhudan Land. They have also invited my attention towards the report of the Circle Officer dated 01.08.2015 which shows that, in old or new 7/12 extract nowhere it is mentioned that the land i.e. Survey No. 96 admeasuring 3.57 HR is a Bhudan Land. This aspect is also considered by the Civil Court i.e. Civil Judge Senior Division, Wardha in Civil Suit No.151/2017 dated 02.01.2024, wherein it is specifically observed in para 29, which read as under:

“वादमिळकतीवर १९८५-८६ पासून भुदान मंडळाची नोंद नसल्याने वादमिळकत ही वेळोवेळी हस्तांतरीत झाली आहे. सदर नोंदी नसल्यामागे कारण हे महसुल विभाग आहे. वादीच्या खरेदीखतास प्रतिवादीने आक्षेप नोंदविलेला नाही. वादीच्या खरेदीखतास संजय व मनोज बुटले यांनी आक्षेप नोंदविलेला आहे. महसुल विभागामध्ये उपविभागीय आयुक्तांनी संजय व मनोज बुटले यांच्या

आक्षेपानुसारच निर्णय दिलेला आहे. वादीने कबुल केल्याप्रमाणे वादमिळकतीची कागदपत्रे त्यांनी स्वतः तपासणी केली”

17. This finding of the Civil Judge Senior Division, Hinganghat is not challenged and it has now attained finality. Thus, the entire revenue record as well as the finding of the Civil Court shows that, there was no document to show that the land was a Bhudan Land and the said land was transferred since 1985-86 on various occasions. It is specifically observed by the Civil Court that, it was the fault on the part of the Revenue Officers of the Revenue Department and the said sale deed was never objected by the accused i.e. Manoj Gulabrao Kuthe who is the original owner of the said land.

18. Thus, the entire investigation papers nowhere shows the fact that the said land is Bhudan Land, was within the knowledge of the present Applicants and after having the said knowledge they have entered into the transactions.

19. It is well settled that for attracting the offence punishable under Section 420 of IPC, the intention since inception is the necessary ingredient which required to be

established by the prosecution at the *prima facie* stage also. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception.

20. The offence punishable under Section 420 of IPC and to constitute the said offence there must be deception i.e. the accused must have deceived someone and that by such deception the accused must induce a person to deliver any property; or to make, alter, destroy a whole or part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable property; or that the accused must have done so dishonestly. The offence punishable under Section 420 of IPC is made out when there is an intention since inception.

21. This aspect is considered by the Hon'ble Apex Court in catena of decisions. In the case of ***Usha Chakraborty & Anr. Vs. State of West Bengal & Anr., (2023) 15 SCC 135***, wherein by referring the case of ***Paramjeet Batra Vs. State of Uttarakhand & Ors., 2013(11) SCC 673***, the Hon'ble Apex Court in paragraph No.12 has observed as under:-

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.”

22. This aspect is further considered by the Hon’ble Apex Court in the case of ***Vesa Holdings (P) Ltd. Vs. State of Kerala, (2015) 8 SCC 293***, wherein it is observed as under:

“13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings.”

23. In the light of above observations if the facts of the present case are taken into consideration as observed earlier none of the revenue records shows that the said land was a Bhudan Land, and therefore, by no stretch of imagination it can be said that the Applicants were knowing that the said land was a Bhudan Land and knowingly they have entered into an agreement to sale and executed the sale deed in favour of the Non-applicant No.2. In absence of these ingredients, it can't be said that there was an intention since inception on the part of the present Applicants. At the most, it can be said that, it is a civil dispute between the present Applicants and the Non-applicant No.2 which can be addressed by the Civil Court. In the absence of an intention since inception, no offence is made out under Section 420 of IPC.

24. The Applicants further charged with the offence punishable under Sections 467 and 468 of the IPC. The offence punishable under Section 467 of IPC deals with the offence of forgery. The essential ingredients to constitute the offence punishable under this Section are:

(i) commission of forgery;

(ii) that such commission of forgery must be in relation to a document purporting to be

(a) a valuable property; or

(b) a will; or

(c) an authority to adopt a son; or

(d) which purports to give authority to any person to make or transfer any valuable security; or

(e) receive the principle, interest or dividends thereon; or

(f) to receive or deliver any money, movable property or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or

(g) an acquittance or receipt for the delivery of any movable property or valuable security.

In the light of these ingredients if the allegations against the present Applicants are seen there is no whisper that the present Applicants have prepared the forged documents and the said forged documents are used for the monetary benefits, and therefore, the offence punishable under Sections 467 and 468 of IPC on the basis of the charge-sheet is also not made out.

25. By applying the principles laid down by the Hon'ble Apex Court while considering the application for discharging of the accused, the Court has to consider the question of framing of the charge under Sections 227 or 239 of Cr.P.C., the Court has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The materials placed before the Court if discloses grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial. Thus, the test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. Thus, in exercising his jurisdiction under Section 227 or 239 of Cr.P.C., the Judge which is under the present Code has to act by sifting and paying the evidence which is collected during the investigation.

26. By applying the said test to the present case, even not grave suspicion is raised from the investigation papers. In view of that, the order passed by the Judicial Magistrate First Class, Court No.3, Hinganghat, District Wardha as well as the order passed by the Additional Sessions Judge, Hinganghat deserves to be quashed and set aside. Both the Courts have not considered that the revenue record nowhere discloses that the land was a Bhudan Land and the various transactions have already taken place on the said land since 1984-85. Both the Courts have also not considered that nothing is on record collected during investigation by the Investigating Agency to show that there was an intention since inception to infer that with dishonest intention the present Applicants entered into the transaction. At the most, the civil dispute may arise between the parties but that would not be sufficient to attract the offence punishable under Sections 420, 468 and 471 of IPC. In view of that, the Applications deserve to be allowed. Accordingly, I proceed to pass the following order.

ORDER

- i. Criminal Applications are **allowed**.

- ii. The order passed by the Judicial Magistrate First Class, Court No.3, Hinganghat, District Wardha below Exh.72 in R.C.C. No.299/2018 dated 21.10.2022 and confirmed by the Additional Sessions Judge, Hinganghat in Criminal Revision Application No.27/2022 dated 28.03.2023, is hereby quashed and set aside.
- iii. The present Applicants are discharged from the offence punishable under Sections 420, 468 and 471 read with Section 34 of Indian Penal Code.
- iv. The Trial Court shall not be influenced by the observation in respect of the other Applicants.

27. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)