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

CRIMINAL APPLICATION (APL) NO.22 OF 2024

1. Dhanraj Balkishan Rathi,
Aged 74 years,
Occupation : Business,
R/o.27/4, 3rd floor, Ayalur Muthaiah Streets,
Kondithope, Chennai, Tamilnadu.

2. Shravan Ghanshyam Rathi,
Aged 42 years,
Occupation : Business,
R/o. Plot No.100, 2rd floor,
F-2203, B-Block, Girnor Apt,
Sydhenames Lane, Sydnenams
Road, Opposite Jawaharlal Nehru
Indoor Stadium, Gage No.1,
Pariamet Park Town, Chennai,
Tamilnadu.

3. Sushil Ghanshamdas Rathi,
Aged 45 years,
Occupation : Private Service,
R/o. Namuna Galli No.5,
Amravati. **.... APPLICANTS**

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Frezarpura, Taluka and
District Amravati.

2. Dr. Paresh Narayandas Soni,
Aged major,
Occupation : Doctor,
R/o. Plot No.30, Swaroop Nagar,
Behind Swawalambi Nagar,
Plot No.30, Nagpur. **....NON-APPLICANTS**

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Mr. A. D. Bhate, Advocate for applicants.
Mr. K. R. Lule, APP for non-applicant No.1/State.
Mr. Sahil Mate, Advocate h/f Mr. A. P. Modak, Advocate for the non-applicant No.2.

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CORAM : URMILA JOSHI-PHALKE, J.
DATED : 18/03/2026

ORAL JUDGMENT :

1. Heard.

2. **Admit**.

3. Heard finally with the consent of the learned Counsel for the applicants, learned APP for the State and learned counsel for the non-applicant No.2.

4. By invoking the jurisdiction under Section 482 of the Code of Criminal Procedure, the present applicants are seeking quashing of the FIR in connection with Crime No.799/2022 registered with Police Station, Frezarpura, District Amravati for the offence punishable under Sections 419, 420, 465, 466, 468, 471 read with Section 34 of the Indian Penal Code (for short 'IPC') and under Section 82 of the Registration Act,1908 and the consequent proceeding arising out of the same bearing RCC No.901/2023 pending before the learned Judicial Magistrate First Class, Amravati.

5. The crime is registered on the basis of a report lodged by the non-applicant No.2 on an allegation that he was having agriculture land bearing Survey No.165 at Mouza Sayat, Taluka Bhatkuli, District Amravati, admeasuring 3 Hectare 53 R. It is further alleged that his land was transferred in the name of the

applicant No.1 using the forged Aadhar Card and Pan card of the informant. It is further alleged that for transferring the said land in the name of the applicant No.1, the sale deed was shown to be executed and the documents were forged by the unknown accused, who represented himself as Paresh Soni i.e. the complainant and thereby cheated the informant to the tune of Rs.28,55,000/-. On the basis of the said report, police have registered the crime against the present applicants and the other co-accused.

6. After registration of the crime, the investigation started rotating. During investigation, the Investigating Officer has collected the various documents as well as recorded the statements and after completion of the investigation, submitted the charge sheet against the present applicants.

7. Heard learned counsel for the applicants, who submitted that even accepting the allegation as it is, the present applicants are the purchasers. There is nothing on record to show that since inception there was an intention on the part of the present applicants. At the most, the allegation levelled against the present applicants would constitute the offence against the co-accused, who represented himself as Paresh Soni i.e. the complainant and therefore, the offence *prima facie* is not made out against the present applicants, neither under Section 420 nor

under Sections 467, 468 or 471 of IPC. In support of his contention, he placed reliance on the decision of the Hon'ble Apex Court in the case of **Md. Ibrahim and others Vs. State of Bihar and another** reported in **(2009) 8 SCC 751.**

8. Per contra, learned APP and learned counsel for the complainant strongly opposed the said application and submitted that applicant No.3 was from the same locality, and therefore, he was knowing that who is the actual owner of the said property, despite he has concealed the same and by joining hands with the other co-accused, he entered into the transaction and thereby committed an offence. In view of that, the application deserves to be rejected.

9. On hearing both sides and on perusal of the entire investigation papers, it reveals that the land was owned by the informant, namely Dr. Paresh Narayandas Soni. It is alleged by him that another accused by personation, represented himself as Paresh Soni and executed the sale deed in favour of the present applicants and the present applicants have purchased the same knowingly that the person who is executing the sale deed is not the original owner and thereby they have committed an offence.

10. To attract the offence punishable under Section 420 of IPC, the essential ingredients of the offence of the cheating are: (i) deception of a person either by making a false or misleading

representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

11. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

12. Considering the requirement which are required to constitute offence at the most, this would attract against the co-accused, who represented himself as Paresh Soni and also represented himself as the owner of the suit property. As far as the entire investigation papers are concerned, which nowhere discloses that though the present applicants were knowing about the fact that the co-accused was not the owner of the said property, then also by joining hands with him, they entered into

the transaction. Thus, the investigation papers nowhere shows that there was knowledge of the present applicants regarding the ownership of the land. It shows that the said land was owned by one Paresh Soni and the other co-accused has represented himself as Paresh Soni and executed the sale deed in favour of the present applicants, therefore the only role attributed to the present applicants that they are the purchasers, whether they are *bona fide* purchasers or not, which is required to be considered by the Civil Court.

13. Learned counsel for the applicants rightly placed reliance on the decision of the Hon'ble Apex Court in the case of **Md. Ibrahim and others Vs. State of Bihar and another** (supra), wherein the Hon'ble Apex Court in para No.14 observed as under:

> *"14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so*

deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code."

14. The Hon'ble Apex Court further in para No.15 clarified as under:

"15. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. The term `fraud' is not defined in the Code. The dictionary definition of `fraud' is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines `fraud' with reference to a party to a contract. In* ***Dr. Vimla Vs. Delhi Administration AIR 1963 SC 1572****, this Court explained the meaning of the expression `defraud' thus

The expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm *whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."*

The above definition was in essence reiterated in State of U.P. Vs. Ranjit Singh.

15. Thus, the Hon'ble Apex Court observed that therefore merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.

16. Similar is the case in the present matter also the allegations in the complaint do not also made out ingredients of the offence as far as the deception is concerned. The averments in the complaint if assumed to be true, the offence under Sections 420, 467, 468 and 471 of the IPC are not made out in view of the observation of the Hon'ble Apex Court.

17. By applying the parameters laid down by the Hon'ble Apex Court in the case of **State of Haryana and others Vs Bhajan Lal and others** reported in **1992 Supp. (1) SCC 335,** which reads as under:

"(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) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(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) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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.”

18. No prima facie case is made out against the present applicants, in view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is **allowed**.

(ii) The FIR in connection with Crime No.799/2022 registered with Police Station, Frezarpura, District Amravati for the offence punishable under Sections 419, 420, 465, 466, 468, 471 read with Section 34 of the Indian Penal Code and under Section 82 of the Registration Act, 1908 and the consequent proceeding arising of the same bearing RCC No.901/2023 pending before the learned Judicial Magistrate First Class, Amravati, are hereby quashed and set aside to the extent of the present applicants.

The application is disposed of.

(URMILA JOSHI-PHALKE, J)

Sarkate.