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

CRIMINAL WRIT PETITION NO.827 OF 2025

Bhojraj Rambhau Nagpure,
aged about 40 years, occupation: private,
r/o By-Pass Chowk, Umred,
tahsil Umred, district Nagpur. ..... **Petitioner.**

:: **V E R S U S** ::

1. State of Maharashtra,
through Police Station Umred,
tahsil Umred, district Nagpur.

2. Vilas Ganesh Zodape,
age: 32, occupation private,
r/o Milan Chowk, Mangalwari Peth,
Umred, district Nagpur. ..... **Respondents**.

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Shri A.Hunge, Counsel for the Petitioner.
Shri A.M.Joshi, APP for Respondent No.1/State.

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CORAM : URMILA JOSHI-PHALKE, J.
DATE : 30/01/2026

ORAL JUDGMENT

1. Heard learned counsel Shri A.Hunge for the petitioner and learned APP Shri A.M.Joshi for the

respondent No.1/State. **Rule**. Rule is made returnable forthwith.

2. By this petition, the petitioner is seeking following reliefs:

> "(a) Quash and set-aside order dated 12/08/2025 (Annexure-C) passed by learned Additional Sessions Judge, Nagpur in criminal revision no.208/2023 thereby upholding the order passed by learned Judicial Magistrate First Class, Umred below Exh-13 in RCC No.104/2018 wherein application for discharge filed u/s 239 of Code of Criminal Procedure, 1973 was rejected;
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> (b) Stay further proceedings in RCC NO.104/2018 pending before learned Judicial Magistrate First Class, Umred;
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> (c) Grant ex parte ad interim relief in terms of prayer clause (b);

(d) Grant any other relief and issue such other suitable directions as this Hon'ble Court deems fit and proper in the facts and circumstances of the case".

3. Brief facts necessary for disposal of the petition, are as under:

The petitioner is prosecuted for offences under Sections 420 and 503 of the IPC and 13 and 15(1) of the Press and Registration of Books Act, 1867 on the basis of a report lodged by respondent No.2 (the complainant) alleging that he is a resident of Umred and acquainted with the petitioner from last seven years who runs Daily Newspaper namely "Vidarbha Kalyan." In December 2013, the complainant was appointed as a "President of District Rashtrawadi Youth Congress." As soon as the petitioner came to know about his appointment, he started insisting him to give advertisement by paying amount Rs.10,000/- and, therefore, he has given advertisement dated 25.12.2013 by paying amount of Rs.10,000/-. Thereafter, he was insisting to pay the amount and was threatening the complainant that if he has not paid the amount, he will defame him by writing an “Article” and accordingly, he has written some “Articles” by not mentioning his name, but it was referring to him and thus he has defamed reputation of the complainant.

It is also alleged by the complainant that the petitioner approached various persons and under pretext of one or the other Schemes, extracted money from various persons and thereby cheated various persons. On the basis of the said report, the police have registered the crime against the petitioner.

4. After registration of the crime, the investigating officer has recorded relevant statements of witnesses and as during the investigation, it revealed that the petitioner has obtained money from various persons, after completion of investigation, chargesheet was filed against the petitioner.

5. After filing of the chargesheet, the petitioner has preferred an application under Section 239 of the Code for discharge on the ground that perusal of the entire complaint and the material placed on record, allegations incorporated in the complaint are vague and the said complaint does not demonstrate a case under the alleged offences against the petitioner. Thus, basic ingredients of offences are not made out and, therefore, he be discharged from the charges. The said application came to be rejected by learned Judicial Magistrate First Class, Umred.

6. Being aggrieved and dissatisfied with the said order passed by learned JMFC, Umred, Criminal Revision No.208/2023 is preferred by the petitioner. Learned Additional Sessions Judge, Nagpur has also considered the order passed by learned Magistrate and the entire record and and dismissed the revision.

Hence, the present petition.

7. Learned counsel for the petitioner has taken me through the entire chargesheet and submitted that from the recital of the FIR and the entire investigation papers, as far as the allegations regarding "defamation" are concerned, the same are not made out as "Articles" nowhere reveal that it pertains to the complainant.

He further invited my attention towards various statements of the witnesses and submitted that it does not disclose any offence as far as ingredients of Section 420 of the IPC are concerned.

He further submitted that the petitioner is not the aggrieved person and, therefore, the allegation regarding "cheating" is not made out.

He submitted that, in view of the above, the writ petition deserves to be allowed.

8. *Per contra*, learned APP for the State has strongly opposed the said contentions and taken me through various statements of witnesses and submitted that any person can set criminal law in motion. The statements of witnesses recorded during the investigation disclose that the petitioner approached various persons from village Umred and obtained money from them on one or the other pretext. Thus, the offence under Section 420 of the

IPC is made out and, therefore, the writ petition being devoid of merits is liable to be dismissed.

9. Learned counsel for the petitioner has placed reliance on the following decisions:

> **1. Deepak Kumar Shrivas and anr vs. State of Chhattisgarh and ors, reported in AIR OnLine 2024 SC 88;**
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> **2. Vesa Holding P.Ltd. and anr vs. State of Kerala and ors, reported in 2015 AIR SCW 2245;**
>
> **3. State of Maharashtra vs. Syed Mohammed Masood and anr, reported in 2009 AIR SCW 6825; and**
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> **4. Vinod Natesan vs. State of Kerala and ors, reported in AIR OnLine 2018 SC 987.**

10. On going through the entire chargesheet, it reveals that the petitioner is prosecuted for offences under Sections 420, 501, 502, and 503 of the IPC and 13 and

15(1) of the Press and Registration of Books Act, 1867. As per the allegations, the petitioner, who runs daily newspaper namely “Vidarbha Kalyan,” has published “Articles” alleging malpractices by the “Youth Leader of Rashtrawadi Youth Congress”. It is further alleged that the petitioner has obtained money from various persons for one or the other pretext. The various statements of witnesses are recorded. The statements of witnesses namely Rekha Dhnyaneshwar Mule, Premdas Tukaramji Padole, Balwant Bapurao Padole, Dhanpal Krushnaji Padole, and Shivaji Paydalwar are recorded.

As far as statements of Premdas Tukaramji Padole and Dhanpal Krushnaji Padole are concerned, it shows that from them the petitioner has obtained the money on the pretext of Scheme under “Chitransh Technology Private Limited” and obtained amount of Rs.35,000/-.

The statement of Rekha Dhnyaneshwar Mule discloses that the petitioner has obtained money from her by asking her to invest the amount in “Pradhanmantri Skill Development Government Scheme” and, therefore, she collected the amount from various girls studying in her institute for the “Course of Beauty Parlour”.

The statement of another person namely Shivaji Paydalwar shows that the petitioner approached him and told him that there is a Scheme run by the Government of India for running the Computer Courses and if he starts the said course, he will get the handsome amount and thereby obtain the money from him also.

Thus, various statements of witnesses disclose that the petitioner approached them and induced them to invest amounts in various Schemes and he obtained money from them.

11. Thus, recital of the FIR is substantiated by other statements of various witnesses.

12. As far as offence under Section 500 of the IPC i.e. "defamation" is concerned, definition of "defamation" is given under Section 499 of the IPC, which says as under:

> "**Section 499**. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.
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> Explanation 1.— It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.
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> Explanation 2.— It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

> Explanation 3.— An imputation in the form of an alternative or expressed ironically, may amount to defamation.
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> Explanation 4.— No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful".

13. Perusal of "Articles" published in the newspaper run by the petitioner shows that he has narrated about the Youth Leader who is working in Umred Taluka.

Whether it relates to the complainant or not, an opportunity is to be granted to the complainant to adduce evidence to that effect.

14. As far as offence under Section 420 of the IPC is concerned, various statements of witnesses show that amounts were obtained from them on one or the other pretext and, thereafter, the same were not returned to them.

15. Learned counsel for the petitioner has placed reliance on the decision in the case of **Deepak Kumar Shrivas and anr** *supra* wherein the Hon'ble Apex Court has considered that there was unexplained delay on the part of the informant in reporting the matter despite a previous inquiry, which raised doubts about legitimacy of his claim.

As far as the decision in the case of **Vesa Holding P.Ltd. and anr** *supra* is concerned, the facts in the said case are not identical with the present case and, therefore, the said decision is also not helpful to the petitioner.

He has also placed reliance on the decision in the case of **State of Maharashtra vs. Syed Mohammed Masood and anr** *supra* wherein the allegations made in the FIR and the material collected during the investigation showing some facts, which should be allowed to be taken at its logical end and, therefore, the quashing order was passed.

Perusal of the facts of that case reveals that there was an agreement between the parties. The said agreement was executed *inter alia* providing that the car would be purchased in the name of investor but would be used by the Company on rent to others wherefor the investor would receive a sum of Rs.4,000/- per month for a period of five years. After 60 months, i.e., at the end of the agreement, the investor may take back his car in proper working condition and there was breach of contract. In that light, the observation was made by the Hon'ble Apex Court.

The another decision, in the case of **Vinod Natesan vs. State of Kerala and ors** *supra,* is also in respect of the dispute between the parties is of a civil dispute and, therefore, the FIR was quashed.

16. Coming to the facts of the present case, statements of various witnesses show that the petitioner has obtained money from them on one or the other reason.

17. As far as offence punishable under Section 420 of the IPC is concerned, the law is settled that ingredients of the offence of "cheating" described under Section 415 of the IPC, are that, "whoever, by deceiving any person, fraudulently or dishonestly induces the person so

deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

18. To hold a person guilty of "cheating" as defined under Section 415 of the IPC, it is necessary to show that he had "fraudulent" or "dishonest" intention at the time of making a promise with an intention to retain the property.

19. In the light of the above definition, admittedly, various statements of witnesses disclose "dishonest" intention on the part of the petitioner.

20. As far as the application for discharge is concerned, 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.

21. The Hon'ble Apex Court in the case of **State of Tamil Nadu vs. N.Suresh Rajan and ors, reported in (2014) 11 SCC 709** adverting to the earlier propositions of law laid down on this subject has held as under:

> "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."

22. 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.

23. In the case of **Union of India vs. Prafulla Kumar Samal and anr, reported in (1973)3 SCC 4**, the Hon'ble Apex Court considered the scope of Section 227 of the Code of Criminal Procedure. After adverting 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."

24. Thus, the catena of decisions explains the scope of Sections 227 and 228 of the Code of Criminal Procedure and principles therein are laid down.

25. With the above principles, if the material in the present case collected during the investigation is considered, there is no dispute as to fact that various statements of witnesses disclose *prima facie* material against the petitioner and, therefore, considering the settled law that even a strong suspicion is sufficient to frame the charge against accused. The trial court as well as the the revisional court has rejected the application.

.....23/-

26. In this view of the matter, the present writ petition is devoid of merits is liable to be dismissed and the same is **dismissed** accordingly.

Rule stands discharged.

27. Needless to mention that the trial court shall not be influenced by the observations made by this court which are *prima facie* in nature.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!