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

CRIMINAL APPLICATION (APL) NO. 901 OF 2025

Arpan Ashok Murarka
Aged about 40 years,
Occupation : Business,
R/o Plot No.5, Ganesh Nagar,
Great Nag Road, Nagpur-440024

// V E R S U S //

The State of Maharashtra,
Through Station Officer, **NON-APPLICANT**
Immamwada, Police Station,
Immamwada, Nagpur

Mr. Ashok Raghute, Advocate for the applicant.
Mr. A.M. Kadukar, APP for non-applicant /State.

CORAM : URMILA JOSHI PHALKE, J.

Judgment reserved on:- 29.01.2026
Judgment pronounced on:- 03.01.2026

J U D G M E N T :

1. Heard.

2. **ADMIT.** Taken up for final disposal with the consent of learned counsel for the parties.

3. The present application is preferred by the applicant challenging the order passed by the Judicial Magistrate First Class, (Corporation Court-1) in RCC No.145/2019 dated 21.03.2024 rejecting the discharge application and the order of Additional Sessions Judge-10 in Criminal Revision Application No.101/2024 decided on 13.01.2025 by which the order passed by the learned Judicial Magistrate is confirmed and the application for discharge is rejected.

4. Brief facts which are necessary for the disposal of the application are as under:-

On 29.09.2018, one Vishal Nagrare has lodged a report to the effect that the applicant and his sister (Pooja Agrawal) have represented him that he is intending to sell a plot (Bearing No.44, Khasra No.115(2), Patwari Halka No.44 of Mouza Somalwada, Nagpur situated in the layout of Prerna Co-operative Housing Society Limited). An agreement of sale dated 09.06.2017 was executed between him, his wife and the applicant for consideration of Rs.35 Lakhs. At the time of execution of agreement of sale he paid an amount of Rs.1 lakh in cash to the applicant. The applicant has handed over documents pertaining to the said plot to the informant. The informant made an inquiry with the Nagpur Improvement Trust and it revealed to him that the documents handed over to him by the applicant are forged and fabricated. On further inquiry it reveals that original owner of said plot is one Suresh Matade and said Suresh Matade has never sold out the plot to the present applicant. Thus, the sale deed which is shown to the informant by the present applicant to show his ownership that said Suresh Matade has sold the said plot to him is forged and on the basis of the forged document the applicant entered into an agreement with the informant and obtained the amount and thereby deceived him. On the basis of the said report police have registered the crime against the present applicant.

5. After registration of the crime due investigation was carried out. During investigation the various statements of the witnesses were recorded and after recording of the statements the charge-sheet was filed against the present applicant.

6. After filing of the charge-sheet the present applicant has preferred an application for discharge under Section 239 of

the Cr.P.C. before the Court of Judicial Magistrate First Class on the ground that the revenue record shows his name as owner of plot No.44 Khasara No.115/2. Accordingly his name was also entered in the revenue record. As far as forged letter of NIT is concerned, at the relevant time he was not owner of the said property and therefore, he is not concerned with the said forged letter. Therefore, no prima-facie case is made out against him and there is no sufficient material to frame the charge against him. Therefore, he be discharged from the charges. The learned Magistrate after considering the entire investigation papers and the principles laid down for considering the application for discharge and thereafter rejected the application.

7. Being aggrieved and dissatisfied with the order passed by the learned Judicial Magistrate First Class the present applicant preferred Criminal Revision bearing No.101/2024, in the said revision, the Additional Sessions Judge No.10, Nagpur had considered the entire charge-sheet and also considered the various statements recorded during the investigation and observed that at this stage, prima-facie case against present applicant revealed and

there is sufficient evidence to frame the charge and thereby dismissed the revision.

8. Being aggrieved and dissatisfied with the same, present application is preferred by the applicant on the ground that both the courts below have not considered that the revenue record shows the ownership of the present applicant regarding the property in dispute. The registered document sale deed which is executed by the original owner in favour of the present applicant shows his ownership. On the basis of said sale deed his name is also entered in the revenue record. Thus, as far as ownership of the present applicant over the said plot is concerned, which is not in dispute. He further submitted that considering the fact that the entire prosecution relies upon one letter issued by NIT showing that the earlier communication dated 24.01.2014 is not issued from NIT regarding the regularization of the construction and thus, said document is forged one. At the relevant time the present applicant was not owner of the said property. He purchased the said property subsequent to 24.01.2014. Therefore, he is not at all concerned with the forgery of the said document. Being he is owner entered into an agreement with the present

applicant. At the most, it is a civil dispute and no intention can be gathered from the circumstances. In view of that, application deserves to be allowed by setting aside the orders passed by the Judicial Magistrate First Class, Nagpur and the Additional Sessions Judge, Nagpur.

9. Per contra learned APP and learned counsel for the non-applicant No.2 strongly opposed the said contention and invited my attention towards the various statements of the witnesses and including the statements of the original owner Suresh Matade and submitted that the statement of Suresh Matade itself shows that he never got acquaintance with the present applicant and he never sold out the said plot to the present applicant. Sale deed itself is forged one on the basis of which, applicant has entered his name in the revenue record. Thus, on the basis of the forged document the present applicant entered into the agreement with the present informant and thereby obtained money and deceived him. Thus, considering the prima-facie material at this stage, learned Court below rightly rejected the application and therefore, the present application being devoid of merits and liable to be dismissed.

10. Upon hearing both the sides and on perusal of the entire investigation papers it reveals that applicant is seeking discharge on the ground that he is a legally owner of the plot No.44 out of Khasara No.115 as he has purchased it from the original owner Suresh Matade. During investigation the Investigating Officer has collected the relevant documents and also recorded the relevant statements of the witnesses. From the documents which are collected, during the investigation it revealed that initially, the said plot was owned by Prerna Cooperative Housing Society Limited, Nagpur. The original owner Suresh Matade and Secretary Ganpatrao Bhauraoji of Prerna Cooperative Housing Society Limited Nagpur entered into an agreement to purchase the said plot No.44 out of Khasra No.115(2) and thereby sell deed was executed in favour of said Ganpat Bhauraoji on 03.04.1986. By way said registered sale deed said Suresh Matade became owner of the said plot No.44. As per contention of the applicant that he purchased the said plot from Suresh Tukaram Matade on 30.07.2016 by way of registered sale deed and on the basis of said registered sale deed, he entered his name on the revenue record. Admittedly, the sale deed which

placed on record shows that when sale deed is executed between Suresh Tukaram Matade and Arpan Ashok Morarka i.e. present applicant on that basis the name of the present applicant is also entered on the revenue record. But during investigation the Investigating Officer has recorded the statements of said Suresh Matade. The statement of Suresh Matade specifically said that he was owner of plot No.44 out of Khasara No.115(2) owned by Prerna Cooperative Housing Society. He has sold out the said plot in the year 2014 itself to one Arati Sandip Sabnish and Vijay Narayan Deshpande for the consideration of Rs.20 Lakhs. He specifically stated that he has not acquainted with the present applicant and there was no transaction took placed between him and the present applicant. He has not entered into any agreement of sale or sale with the present applicant. The statements of the various witnesses wife of the informant, one Javed Israel Khan, Prakas Madhavrao Hande and so on specifically stated that Suresh Matade was the owner of the said plot No.44. Thus, as far as sale deed executed by Suresh Matade in favour of the present applicant allegedly is in question. The original owner himself specifically denied that he has not executed any sale deed in favour of the present applicant. Therefore, there is substance in the contention of the learned counsel for the complainant that on the basis of forged sale deed the applicant entered into an agreement to sale.

11. By way of this application the applicant is seeking discharge. It is settled principle of law that at the stage of considering an application for discharge, the Court must proceed on the assumption that 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 ingredients necessary of the offence alleged.

11. The Hon'ble Apex Court in the case of ***State of Gujarat vs. Dilipsinh Kishorsinh Rao***, reported in ***MANU/ SC/1113 2023***, adverting to the earlier propositions of law in its earlier decisions in the cases of ***State of Tamil Nadu vs. N.Suresh Rajan and ors,*** reported in ***(2014) 11 SCC 709*** and ***The State of Maharashtra vs. Som Nath Thapa***, reported in ***(1996) 4 SCC 659*** and ***The State of MP Vs. Mohan Lal Soni***, reported in ***(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 adverting 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."

12. 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.

13. 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."

Thus, the catena of decisions explains the scope of Sections 227 and 228 of the Code of Criminal Procedure from which following principles emerge:

1. While considering the question of framing the charges under section 227 of the Code, the court 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: The test to determine prime facie case would depend upon the facts of each case.

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 court 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. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

4. If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

> 5. At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

12. With the above principles, if the material in the present case collected during the investigation is discussed there is no dispute as to the fact that the documents on record shows that the original owners statement specifically denies any transaction with the present applicant. The allegations levelled against the present applicant to be looked into in the light of provision under Section 420 of IPC. As far as the offence under Section 420 of IPC is concerned, there has to be an intention since inception. The ingredients of offence of cheating described in Section 415 of the IPC requires deception of any person, (a) inducing that person to (b) to deliver any property to any person, (c) to consent that any person shall retain any property and (d) intentionally inducing that person 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, anybody's mind, reputation or property.

13. In the light of the above definition admittedly there is material on record to show the dishonest intention of deception on the part of present applicant. Considering the principles laid down in catena of decisions that at this stage, the defence of the accused not to be looked into. If the material collected during the investigation is sufficient to frame the charge or even strong suspicion is also sufficient to frame the charge. In view of that the prima-facie material is available in the present case and at this stage, the Court is not expected to go deep into the matter and hold that the materials would not warrant conviction. In my opinion, what needs to be considered is whether there is ground for presuming that the offence has been committed or not and not whether a ground for convicting the accused has been made out. To put it differently the material on record on its probative value if examined there is sufficient material to frame the charge. The law does not permit a mini trial at this stage. More over the defence of accused is not looked into at this stage. The expression “the record of the case into” used in Section 227 or 239 of the Code of Criminal Procedure is to be understood as the documents and material if any produced by the prosecution and by examining the said material the test of existence of prima-facie case is available

in the present case, in view of that, the order passed by the Judicial Magistrate First Class rejecting the discharge application and confirmed by Additional Sessions Judge, Court No.10, Nagpur is proper, legal and no interference is called for.

14. The application being devoid of merits and liable to be dismissed.

15. Hence, I proceed to pass the following order:-

ORDER

(i) The Criminal Application is dismissed.

16. The criminal applications stand disposed of in the above said terms.

Pending applications, if any, also stand disposed of.

(URMILA JOSHI PHALKE, J.)

manisha

Signed by: Mrs. Manisha Shewale
Designation: PA To Honourable Judge
Date: 03/02/2026 17:52:32