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

CRIMINAL APPLICATION (APL) NO. 1558 OF 2025

1. **Shrichand Popalal Bhojwani** — **APPLICANT**
Aged about 69 years,
Occupation : Business,
R/o Nanak Nagar
(Krushana Nagar)
Amravati Tq. Dist. Amravati

// V E R S U S //

1. **The State of Maharashtra,**
Through Police Station Officer, — **NON-APPLICANTS**
Gadge Nagar, Amravati
2. **Maheshkumar Narayandas Batra,**
Age 42 years, Occ. Business,
Ro. Kawar Nagar, Amravati,
Tq. Dist. Amravati

Mr. Anil Mardikar, Senior Advocate assisted by Mr. Ved Deshpande, Advocate for the applicant.
Mr. N.B. Jawade, APP for non-applicant No.1/State.
Mr. Parag Kadu, Advocate for non-applicant No.2.

CORAM : URMILA JOSHI PHALKE, J.

JUDGMENT RESERVED ON :- 10.02.2026

JUDGMENT PRONOUNCED ON:-

JUDGMENT

1. By present application the applicant has challenged the order passed by the Judicial Magistrate First Class Court No.3,

Amravati in Criminal Case No.631/2014 below Exh.14 dated 14.01.2020 by which the application filed under Section 239 of Code of Criminal Procedure for discharge is rejected.

2. The brief facts which are necessary for the disposal of the application are as under:-

Non-applicant No.2 Maheshkumar Batra had taken a loan of Rs.30 Lakhs from the Amravati Peoples Co-operative Bank Ltd. which subsequently merged into Cosmos Bank by mortgaging his shop situated at Nazul Plot No.33, Shop No.81 C of Mouje Peth Amravati, Badnera Taluka and District Amaravati. As the non-applicant No.2-complainant could not repay the loan amount, the bank with whom the property was mortgaged took the possession of the said shop. The bank has also initiated the action under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred as SARFAESI Act). The bank has issued a paper publication for conducting public auction on three occasions. The present applicant participated in the said public auction held on 20.09.2010. Being he was highest bidder as he offered Rs.28.5 Lakhs for purchasing the said disputed shop his bid was accepted and sale certificate was issued in his name by the bank. The property was accordingly, mutated in his name. Property card was also issued in his name.

3. After issuance of sale certificate of the disputed shop, informant came to know that the bank employee in collusion with Sub Registrar of the land records present applicant had forged the documents i.e. property card and deceived the government by selling the disputed shop without disclosing it to be category of 'B-Tenure'. It is alleged by the complainant that any property which falls under the category of B-Tenure is not liable to be alienated except with the permission of the Collector and if District Collector permits for alienation of such property, requisite charges are to be paid for transferring of such property. Neither the bank nor the present applicant has disclosed about the fact that the disputed shop is falling under the category of B-Tenure and prepared the property card without mentioning a category of the land and thereby committed the offence punishable under Sections 409, 420, 468 and 471 read with 34 of the IPC.

4. On the basis of the said report police have registered crime against present applicant as well as other bank officials. During investigation Investigating Officer has collected the property card and other relevant documents i.e sale certificate as well as recorded the statements of various witnesses. After completion of the investigation, Investigating Officer has filed charge sheet against present applicant.

5. The applicant has filed application seeking discharge from the charges on the ground that he has no role. He is the only auction purchaser pursuant to the publication issued by the bank. The reserved price of the property is already fixed and he offered more than the reserved price and the market value of the property. Therefore, no offence is made out against him. The learned Magistrate has considered the various statements of the witnesses and document which was allowing with the sale certificate collected during investigation and observed that there is sufficient material against the present applicant to frame the charge and rejected the application.

6. Being aggrieved and dissatisfied with the same the present applicant preferred criminal revision No.21/2020 before the Sessions Court. The said Criminal Revision also came to be dismissed by maintaining the order of Judicial Magistrate First Class, Amravati.

7. Being aggrieved and dissatisfied with the same present application is filed by the applicant for discharge.

8. Heard Mr. Anil Mardikar, learned Senior Counsel for the applicant. He invited my attention towards the entire transactions and submitted that the present applicant is purchaser who has purchased the disputed shop during the auction process initiated by the Cosmos Bank and sale certificate is issued in favour of the present applicant. He further submitted that the communication issued by the Registrar Class-2, Amravati City shows that the permission of the Collector is not required for alienating the shop which is constructed on B-Tenure land. Therefore, no offence is made out against the present applicant. He submitted that the contention of the bank officers that they have handed over all the documents to the present applicant to

prepare sale deed itself is not tenable as it is duty of the bank officers to prepare the same and thereafter to hand over the sale certificate to the present applicant. He submitted that even accepting the allegation as it is the contention of prosecution is not sustainable as there is no material to show that it was the present applicant who has forged the documents. Therefore, it is fit case wherein this Hon'ble Court by exercising power under Section 528 of BNS, 2023 discharge the applicant.

9. Per contra learned APP for the State and learned counsel for the non-applicant No.2 strongly opposed the said contention and invited my attention towards the property card which is collected during the investigation and the property card which is annexed along with sale certificate. They submitted that property card which is collected during the investigation which is at record page No.49 sufficiently shows that the class of the land was B-Tenure whereas property card which is attached along with the sale certificate shows the column of class of land as a blank. They submitted that even accepting that permission was not required to alienate the said shop then also the act of the present applicant sufficient to infer that he has forged the property card

by joining hands with the officials of the land records. At this stage, sufficient material is available to frame the charge and therefore, the application deserves to be rejected.

10. Before entering into the merits of the case, it is necessary to consider the parameters for deciding the application for discharge.

11. It is settled principle of law that at the stage of 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, discloses 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***, 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:*
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> *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 " 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 provision 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 submissions of the accused is to be confined to the material produced by the Investigating Agency. The primary considerations at the stage of framing of charge is test of existence

of prima-facie case, and at this stage, the probative value of materials on record need not to be gone into. At the stage of entertaining the application for discharge either under Section 227 or under Section 239 of the Code of Criminal Procedure Code the Court cannot analysis or direct evidence of the prosecution and defence on 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:*
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> *"(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."

14. 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 complainant/non-applicant No.2 obtained loan from Amravati Cooperative Bank which subsequently merged into Cosmic Bank but he failed to repay the loan and therefore, action was initiated against him under the provisions of SARFAESI Act. The auction notice was issued and published in the newspaper. In response to the said auction notice the applicant participated in the auction process. Being his bid was highest one it was accepted and bank has decided to execute the sale deed in favour of the present applicant. The statement of the bank manager recorded. During investigation it reveals that after bid was accepted the entire documents were handed over to the present applicant for preparing the sale deed. It was the present applicant who has prepared all the documents and thereafter, the

bank has executed the sale deed in his favour. Manager of the bank Mr Rajesh Sahu in his statement specifically stated that when the original documents were produced by the non-applicant No.2 complainant in the bank while obtaining the loan there was no scoring on the documents. Thus, statement of the bank manager shows that when the original documents were produced by the complainant there was no scoring. However, the documents i.e. property card which is annexed along with sale certificate shows that the class of the land is not mentioned in the said property card. The said documents were handed over to the present applicant and thereafter again that document was produced along with draft of the sale deed to the bank. The Investigating Officer has collected the property card which reveals the class of the land i.e. B-Tenure. Even accepting the communication issued by the Registrar that permission of the Collector was not required for alienating B class land then also question remains why the document which is annexed along with draft sale deed not showing the class of the land. The statement of the bank manager and other statements recorded during investigation disclose there is sufficient material against the present applicant to frame the charge. To attract the offence punishable under Section 467 the essential ingredients to constitute the offence punishable under this Section are whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or 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 an acquittance or receipt for the delivery of any movable property or valuable security.

15. The requirement to constitute offence punishable under Section 468 of the IPC are (1) commission of forgery (2) that he did so intending that document or electronic record forged shall be used for the purpose of cheating.

16. The factual position in the present case would reveal that original documents were handed over to the present applicant by the bank to prepare the draft of the sale deed. The statement of the bank manager shows that when the original documents were submitted by the non-applicant no.2 in the bank, there was no scoring on the said documents. The property card collected during the investigation by the Investigating Officer shows that class of the land was mentioned in the property card whereas the property card attached along with draft sale deed shows that class of the land is not mentioned in the said property card. All aspects are sufficient to raise a strong suspicion against the present applicant. It is well settled that even strong suspicion is sufficient to prove the charge against the accused where the material placed before the Court disclosed grave suspicion against the accused, which has not been properly explained then the Court is fully justified in considering that there is sufficient material for framing the charge. Even accepting the contention of the learned Senior Counsel that the permission to alienate the said property was not required then

also question remains as what was the requirement to prepare the property card which is forced one. Whether present applicant has forged said document or not is a matter of evidence and prosecution to be given an opportunity to prove the same. At this stage, by applying the principles laid down the observation of the trial Court as well as Revisional Court that there is sufficient material to frame the charge as grave suspicion attracted against the accused and at this stage, a roving inquiry into pros and cons of the matter cannot be conducted as if conducting the trial.

17. In view of the above observation there is no reason to interfere with the order passed by the Judicial Magistrate First Class, Amravati as well as the order passed by the Revisional Court in Criminal Revision Application No.21/2020 dated 12.09.2025 being application devoid of merits liable to be dismissed.

18. Accordingly, I proceed to pass following order:-

ORDER

The Application is dismissed.

Pending applications, if any, also stand disposed of.

(URMILA JOSHI PHALKE, J.)

manisha

Signed by: Mrs. Manisha Shewale
Designation: PA To Honourable Judge
Date: 13/02/2026 10:57:31