



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

908 CRIMINAL WRIT PETITION NO. 1123 OF 2024

Sujit s/o Suhasrao Deshmukh
Ave: 38 years, Occu. Advocate
R/o. Deshmukh Galli, Parbhani,
Tq. & Dist. Parbhani

... PETITIONER

VERSUS

The State of Maharashtra
Through Police Station,
New Mondha, Parbhani,
Tq. & Dist. Parbhani

... RESPONDENT

....

Mr. Mahesh S. Deshmukh, Advocate for the Petitioner
Mr. V. M. Jaware, APP for the Respondent – State

....

CORAM : Y. G. KHOBRAGADE, J.

RESERVED ON : 21.11.2024

PRONOUNCED ON : 10.12. 2024

JUDGMENT :-

1. Leave granted to invoke Section 482 of the Code of Criminal Procedure, 1973 (for brevity Cr.P.C.) read with Article 227 of the Constitution of India for challenging the impugned order dated 07.02.2024 passed by the learned Additional Sessions Judge, Parbhani in Criminal Revision Application No. 34 of 2023

arising out of order dated 01.02.2023 passed below Exh. 55 in R.C.C. No. 88 of 2015 passed by the learned Chief Judicial Magistrate, Parbhani. Necessary amendment be carried out.

2. Rule. Rule made returnable forthwith. With consent of both the sides heard finally at the stage of the admission. Heard at length Mr. Mahesh S. Deshmukh, the learned counsel appearing for the Petitioner and Mr. V. M. Jaware, the learned APP for the Respondent State.

3. By the present petition under Article 226 and 227 of the Constitution of India, the petitioner takes exception to the Judgment and order dated 07.02.2024 passed by the learned Additional Sessions Judge, Parbhani in Criminal Revision Application No. 34 of 2023, thereby confirmed the order dated 01.02.2023 passed below Exh. 55 in R.C.C. No. 88 of 2015 by the learned Chief Judicial Magistrate, Parbhani and thereby rejected the application filed by the petitioner seeking discharge for the offences punishable u/s 425, 463, 468, 471, 474, 12-B r/w 34 of Indian Penal Code, 1860 (for brevity IPC) and directed an investigation u/s 156(3) of Cr.P.C.

4. The petitioner is the original accused No. 12 in Crime No. 158 of 2012 registered with Nava Mondha Police Station, Parbhani on 02.08.2012, which is registered vide R.C.C. No. 88 of 2015.

5. The facts giving rise to the present Petition are that, initially, the complainant filed a Regular Criminal Case No. 433 of 2012 before the learned J.M.F.C. Parbhani and prayed for an investigation under Section 156(3) of the Cr.P.C. for the offences punishable u/s 420, 425, 463, 468, 471, 474, r/w 34 of IPC.

6. The complainant filed above complaint and alleged that, land bearing Survey No. 574 was admeasuring 30 Acres, but the same was sub-divided in two parts i.e. S. No. 574/1 and 574/2. Mr. Mujahiddin Mohioddin Ahmad, R/o. Parbhani was the owner of land S. No. 574/1 admeasuring 15 Acres 30 Guntha. The mutation entries of land revenue record effected in the year 1955-1956, 1956-1957, 1957-1958 at serial No. 821 and Survey No. 574/2 at Serial No. 822 to the extent of land admeasuring 15 Acres 25 Gunthas was standing in the name of "Baldiya Sarkar", i.e. the Municipal Authority, Parbhani.

7. Mr. Mujahiddin Mohioddin Ahmed sold his entire land i.e. 15 Acres 30 Gunthas out of Survey No. 574/1 in favour of one Vishwanath Govindappa Teli (Sakhare) under registered sale-deed dated 19-09-1958 for the consideration of Rs. 2,500/-. Thereafter, on 20.08.1966, Shri Vishwanath Govind Teli (Sakhare) sold said land out of Survey No.574/1 for consideration of Rs. 19,220/- in favour of Municipal Council, Parbhani. Accordingly, on 20.08.1966, Sale-deed was registered at Serial No. 1839/1966. In said sale deed four corner of said land described as under:-

East -	Land of Municipal Council Survey No.574
West -	Land Survey No.573
North-	Land of Municipal Council Survey No.574 and road
South-	Municipal Land and railway track.

8. According to the complainant, prior to 1953-1954, original owner Mr. Mujahiddin Mohioddin Ahmed was in possession of 15 Acres 30 Gunthas land out of Survey No.574/1, thereafter he sold said land to Shri Vishwanath Govind Sakhare on 19-09-1958. Thereafter, said Shri Vishwanath Govind Sakhare sold said land vide registered sale dated 20-08-1966 in favour of the Municipal Council, Parbhani. Therefore, after execution of sale-deed dated 20.08.1966, the Municipal Council became the owner and since then it is in

possession of said land. Therefore, the Municipal Council, Parbhani was in possession of total land admeasuring 30 Acres 25 Guntha out of Survey No.574 including other land bearing Survey Nos. 575, 580, 577, 582.

9. The complainant further alleged that, Shri Vishwanath Govind Teli (Sakhare) was neither in possession of said land nor he was owner of the land Survey No.574 after execution of sale deed dated 20.08.1966 in favour of the Municipal Council, its name was duly recorded in the land revenue record.

10. As per the Government Resolution issued by the Education and Social Welfare Department bearing No.TSA/1063/3665/T dated 30.05.1963, the Government started Industrial Training Institute (I.T.I.) on the said land. The I.T.I. took possession of land admeasuring 60 Square Yard from the Municipal Council, Parbhani on 26.03.1964 on payment of appropriate charges.

11. The complainant further alleged that, after getting 12 Acres land from the Municipal Council, again 12 Acres of land was demanded by the I.T.I. from the State Government. Accordingly, the Municipal Council, Parbhani transferred 18 Acres of land out of

Survey No. 574 vide sale deed dated 20.08.1966 for construction of I.T.I. Building. Accordingly, the Chief Officer of Municipal Council, Parbhani, issued a transfer certificate and the Government I.T.I. has taken the possession of the said land. On 16.08.1967, the State Government passed a resolution and accorded sanction to purchase land admeasuring 18 Acres for the consideration of Rs. 87,120/- at the rate of Rs.1/- per Square Yard inclusive of betterment charges in the vicinity of 12 Acres. Accordingly, the Government I.T.I. paid charges to the Municipal Council, Parbhani on 24.01.1968. Since then, the I.T.I. Parbhani is in exclusive possession of land bearing Survey No.574 to the extent of 30 Acres, therefore, no any person is having any right and title over the said land.

12. It is further alleged that, in the year 1964, 12 Acres of land was allotted to the Government I.T.I. Accordingly mutation entries were effected in the revenue record. In the year 1967, the Municipal Council Parbhani again transferred 18 Acres of land to the Government I.T.I. from Survey No.574. Though the Municipal Council was purchased Survey No. 574 to the extent of 15 Acres from Shri Vishwanath Govind Sakhare on 20.08.1966 and in the year 1967 said land was transferred by the Municipal Council, Parbhani, in

favour of the Government I.T.I., but the mutation entry was remained intact in the name of Shri Vishwanath Govind Sakhare in 7/12 extract and the Municipal Council is shown as occupier of the said land.

13. The complainant further contended that, as per the provisions of M.L.R. Code, whenever transfer of title of land is effected under the registered sale-deed, in that event it is necessary on part of the sub Registrar to transmit a copy of sale-deed to the concern Revenue Authority for effecting mutation entry in the revenue record, but in this case even after execution of Sale-Deed dated 20.08.1966 in favour of the Government I.T.I., nobody paid attention for taking mutation in favour of Government I.T.I. Therefore, the name of Shri Vishwanath Govind Sakhare, remained in column of 7/12 extract in respect of land Survey No. 574 to the extent of 15 Acre, 30 Gunthas, but the possession of the said land was in the name of the Municipal Council.

14. The complainant further alleged that, original land owner Vishwanath Govind Teli (Sakhare) died on 09.07.1986, but even after his death, the Revenue Authorities have not taken any steps for correction of mutation entry in favour of the Government I.T.I. The

accused No. 13 Sanjay Vishwanath Sakhare and accused No. 14 Ghanshyam Vishwanath Sakhare though having complete knowledge about transfer of title of said land by their father in favour of Municipal Council, Parbhani thereafter in favour of Government I.T.I., still they both have mutated but they mutated their names in the revenue record in collusion with Revenue Officer. Thereafter both accused nos. 13 & 14 sold said land on 31.12.2006 on the basis of false and bogus documents in favour of the petitioner and other accused.

15. The complainant further alleged that, the Talathi and the Circle Inspector, never issued any notice to I.T.I. in spite of having knowledge regarding execution of sale-deed dated 20.08.1966 and transfer of land in favour of I.T.I. It is further alleged that the accused Nos. 13 and 14, in collusion with the Revenue Authorities carried illegal mutation entry No. 5769 to the extent of 12 Acres and mutation entry No. 4835 on 2.10.2001 to the extent of 1 Acre 29 Gunthas. Thereafter accused Nos. 1 to 10 in collusion with accused No. 13 & 14 prepared a false and fabricated registered sale-deed in respect of I.T.I. land and executed the sale-deed. It is further alleged that all the accused Nos. 1 to 17 joined their hands with an intention

to grab the Government land. So also they published false Public Notice in daily newspaper "Lokmat" on 16.04.2011 through accused No. 1 Notary Advocate Shri B. R. Chokhat claiming that, the accused No. 1/Advocate Pratap Raosaheb Jamkar, accused No.2/ A. Karim, accused No.3/Ramesh Munjagirao Shere are intending to purchase the land to the extent of 2 H 40 R (6 Acres) out of Survey No. 574/1, total admeasuring 6 H 29 R.

16. After publication of notice in the "Lokmat" newspaper, the Accused persons executed the false and bogus sale deed in respect of land belonging to Govt. I.T.I. Thereafter, Govt. I.T.I. through its authorised person submitted written objection addressing to the accused No. 1 Notary Advocate Pratap Jamkar on the ground that, the Accused No. 13 Shri Sanjay Sakhare and 14 Shri Ghansham Sakhare, are not owner and possessor of the said land but the Government I.T.I., is the owner and possessor of the said land to the extent of 30 Acres 30 Gunthas since more than 50 years.

17. So also, the objections were sent to the Collector, Parbhani, Superintendent of Police, Director of Vocational Education and Training, Maharashtra State, Mumbai. However, in spite of said

written objection along with all necessary documents, the accused persons with preparation of mind and by way of hatching conspiracy, went to the office of Sub-Registrar, Parbhani and prepared false and bogus sale-deeds thereby showing that the accused Nos. 13 and 14 executed the false and bogus registered sale-deed in favour of accused Nos. 1 to 12. Though the accused Nos. 1 to 12 were having the knowledge that the said land belongs to Government I.T.I., but still they have prepared false and bogus registered sale-deed in respect of Survey No.574/1 to the extent of 4 H. 8 R., and shown payment of consideration Rs. 2,60,50,000/- (Rupees Two Crore Sixty Lakh Fifty Thousand).

18. It is further alleged that the accused No. 15 to 17 supported all the remaining accused and consented themselves as witnesses to the said transaction. So also, at the time of execution of alleged false and bogus sale-deed, all the accused were very much aware the fact that, the accused Nos. 13 and 14 were neither the owner nor they were in possession of said land. So also, accused Nos. 13 and 14 pretended to be the owners of said land. Further the accused Nos. 1 to 12 were having knowledge that the land in question is of Government land, but just to take the benefit of entry in the

7/12 extract, they made conspiracy to grab the Government land and executed false and bogus sale-deed and the accused Nos. 1 to 12 purchased the said land. The accused Nos.15, 16 and 17 stood as witnesses to the sale-deed which caused wrongful gain to the accused persons and caused wrongful loss to the Government I.T.I. Therefore, the accused persons including the present Petitioner have committed an offence punishable under Sections 420, 425, 464, 467, 471 read with Section 120B of I.P.C. Therefore, the complainant Shri Pravinkumar Digambarrao Ukhalikar, the Principal of I.T.I., Parbhani, prayed for an inquiry and investigation of the offences u/s 156 (3) of Cri. P. C..

19. On 03.07.2012, the learned J.M.F.C. passed an order and directed to register an F.I.R. and investigate the case. Pursuant to the said order, the Investigating Officer recorded statements of the witnesses and after investigation is over, he filed a charge-sheet against accused Nos. 1 to 17 for the offence punishable under Sections 420, 425, 468, 471, 463, 474, 120-B read with Section 34 of I.P.C.

20. Thereafter, the present Petitioner along with accused Nos.1 to 11, 15 and 16 filed an Application below Exh.55 under Section 239 of Cr.P.C. and prayed for discharge on the various grounds enumerated in the application including that the charges levelled against them, are baseless.

21. On 01.02.2023, the learned J.M.F.C. passed an order and rejected the Application below Exh.55 on the ground that on 09.04.1964, the Executive Engineer, Parbhani had issued an intimation in respect of taking of possession of land to the extent of 60,000 Square Yard out of Survey No. 574 and thereafter with the permission of Municipal Council transferred the said land in favour of Government I.T.I.. Though, the entry in the 7/12 extract appears in the name of Sakhare, but in the column of possession, the land is shown in the name of Municipal Council, Parbhani.

22. The learned J.M.F.C. observed that the accused No.1 and the present Petitioner i.e. accused No.12, are legal practitioners and they have acted as per the accused persons in the said transaction. The learned trial Court further observed that perusing the Page Nos.119 and 120 of revenue register maintained with the office of the

Deputy Superintendent of Land Record, Parbhani, it reveals that Shri Vishwanath Sakhare had twice made an entry regarding purchase of the land with original land owner Mujahiddin, but copy of sale-deed was not produced. As per revenue record, the Government I.T.I. is in possession of Survey No. 574. So also, the accused Nos. 13 and 14 agreed to purchase the land to the extent of 15 Acre 30 Gunthas possessed by Municipal Council, Parbhani. However, the accused Nos.13 and 14 were having no documents regarding the said land. The accused persons took undue advantage only on the basis of entry in 7/12 extract, the accused No. 12 acted for accused Nos. 13 and 14 in collusion. Therefore, the material placed on record is sufficient to frame the charges against the accused persons and therefore, rejected the Application for discharge.

23. Being aggrieved by the said order, the Petitioner/Accused No. 12 filed Criminal Revision Application No. 34 of 2023 and other accused filed Criminal Revision Application No. 33 of 2023. On 07.02.2024, the learned Sessions Judge passed the impugned order and dismissed both the Revisions on the ground that the present Petitioner/Accused No.12 had filed a proceeding under Section 482 of Cr.P.C. for quashing the charge-sheet. However, this Court has

observed that there is *prima facie* case against accused, hence charge-sheet cannot be quashed. It is further held that, there are material available on record to frame the charge against the Petitioner/accused, because the land Survey No. 574 was in two parts. One part was owned and possessed by Mr. Mujahiddin and other part was possessed by 'Baldiya Sarkar', Municipal Council, Parbhani. Mr. Mujahiddin sold his entire land to the extent of 15 Acre 30 R to one Mr. Vishwanathappa Govindappa Teli (Sakhare) vide registered sale-deed bearing No. 725 of 1958 and thereafter Mr. Vishwanathappa Govindappa Sakhare sold the said land to the Municipal Council, Parbhani by registered sale-deed dated 20.08.1966 for consideration of Rs. 19,220/-.

24. Thereafter, for establishment of the Government I.T.I., Parbhani, the land admeasuring 30 Acres out of Survey No. 574 was transferred by the Municipal Council, Parbhani in favour of the Government I.T.I. Parbhani as per the directions issued by the State Government. As per letter dated 16.07.1968, the land was transferred by the Municipal Council, Parbhani to the Executive Engineer and then it was transferred to the Govt. I.T.I. Since 1968 the land Survey No. 574 is owned and possessed by Government I.T.I.

to the extent of 30 Acres and no person is having any right, title or interest over the same. The accused Nos. 13 and 14 are the sons of Shri Vishwanathappa Sakhare, who died on 19.07.1986. The accused Nos. 13 and 14 having very much knowledge that their father already sold 15 Acres 30 Gunthats land in favour of Municipal Council, Parbhani vide registered sale-deed dated 20.08.1966 and they are not having right, title or interest. But in spite of said fact they falsely mutated their names in the revenue record in collusion with the Talathi and land Circle Inspector with the help of legal practitioners in respect of the land Survey No. 574 being legal heirs of Mr. Vishwanathappa Sakhare and hatched the conspiracy. Thereafter, they published the Public Notice in the daily newspaper disclosing about Sale-Purchase transaction of land in question and executed the registered sale-deed on 25.4.2011 in favour of accused Nos. 1 to 12.

25. The Revisional Court further held that, the present Petitioner who is a legal practitioner, also filed a civil suit bearing R.C.S. No. 332 of 2008 before the learned Civil Judge Senior Division, Parbhani against the I.T.I. & State Government and prayed for decree of perpetual injunction restraining the defendants from interfering with the peaceful possession. Therefore, strong *prima-facie* case made

out against the accused persons for framing of the charge. Being aggrieved by said Judgment and Order, the Petitioner/accused No. 12 instituted present petition on various grounds as enumerated in this Petition.

26. Mr. Mahesh Deshmukh, the learned Counsel for the Petitioner canvassed in vehemence that, the observations of this Court in an application filed by the petitioner under Section 482 of Cr.P.C., have no impact on the decision of the discharge application. However, both the Courts below have erred in rejecting the discharge application. The Petitioner is a *bona-fide* purchaser, because, the mutation entries are based on the title claimed by Accused Nos. 13 and 14. Further, dispute between the parties is of civil nature. Therefore, in absence of specific allegations, it cannot be held that the present Petitioner with fraudulent or dishonest intention executed the said sale-deed. Therefore, the purported sale-deed could be treated as invalid having being executed without title, but that may not acquire status as of forged and fabricated documents.

27. The learned counsel for the Petitioner further canvassed that the purported mutation entries effected prior to 2016 and there is civil litigation between the Government I.T.I. and the accused Nos.

13 and 14 and during this period, till the date of the execution of the sale-deed or lodging of the complaint, criminal law was never set into the motion. However, these facts have been ignored by both the Courts below. Therefore, the offence under Sections 425, 463, 468 of I.P.C. does not constitute.

28. It is further canvassed that, to make out the case under Section 471 of I.P.C., the prosecution ought to have brought on record the material relatable qua the Petitioner about preparation of any false document with an intention to cheat. However, case of the complainant is based on the purported 7/12 extract and the mutation entries appearing therein which reflects names of the accused Nos. 13 and 14 in the revenue record. However those revenue entries were not prepared soon before the execution of the sale-deed, but said entries were in existence prior to 2006. Therefore, essential ingredients to constitute an offence under Section 468, 471 and 474 of I.P.C., are not sufficient to constitute the offences. Therefore, both the Courts below could have considered the above fact and could have discharged the accused No.12 Petitioner, however, both the courts below wrongly recorded the findings and refused to discharge the petitioner, hence, prayed for quashing and setting aside the same.

29. Mr. Deshmukh, the learned counsel appearing for the Petitioner further canvassed that, the petitioner/Accused no. 12 along with accused No. 17 Adv. Bapurao Sampatrao Chokhat had filed a proceeding under Section 482 for quashing of charge-sheet. However, the accused No.17 filed an application below Exh.31 for discharge. On 12.10.2022, the learned Magistrate passed an order and discharged the accused No. 17 for the offence punishable under Sections 420, 425, 468, 471, 463, 474, 120-B of I.P.C and as such, the role played by the present Petitioner is similar to the role played by the accused No. 17 came to be discharged. Therefore, the Petitioner is entitled for discharge on the ground of parity.

30. I have gone through the order dated 12.10.2022 passed below Exh.31, which *prima facie* appears that, the accused No. 17 Adv. Bapurao Sampatrao Chokhat only played the role to the extent of publication of Public Notice on behalf of his client, who entered into an agreement for purchase of some portion of land out of S. No. 574 and invited objections to said transaction from the interested persons of the said land. As such, there is no record to show that the accused No. 17 gave any opinion to the accused Nos. 1 to 3 for execution of

the sale-deed. Therefore, considering the role played by the accused No.17, it cannot be equited with the role played by the present Petitioner accused No. 12. Therefore, I am on view that, the present petition is not entitled to receive any benefits on the ground of parity with the accused No. 17.

31. The learned Counsel for the Petitioner further canvassed that, the complainant has not made any allegations that the 7/12 extract, which is a part and parcel of sale-deeds were in the possession of the Petitioner/accused No. 12 and knowingly said entries in the 7/12 extract are forged and the Petitioner/accused has committed an offence. Further, the record does not reveal about existence of land acquisition proceeding award, however, the sale-deed demonstrate that the Municipal Council, Parbhani, transferred only specific area forming part of Survey No. 571 in favour of the Government I.T.I. and in absence of the same claim of the I.T.I. being owner of the land in question and commission of offence of cheating by the Petitioner is unfounded. So also, there is no iota of evidence to frame the charge qua the offences as alleged. Therefore, prayed for quashing and setting aside both the orders passed by both the below and to discharge the petitioner.

32. To buttress these submissions, the learned Counsel for the Petitioner relied on all the case laws which were discussed by the learned revisional Court while passing the impugned order, as under:-

- (1) *Md. Ibrahim and Ors. Vs. State of Bihar and Ors.*, AIR 2010 SC (347);
- (2) *Muthammal and others Vs. S. Thangam*, 2019 (1) LW (Crl) 761;
- (3) *Mrs. Priyanka Srivastava and another Vs. State of U.P. and others*, AIR 215 SC 1758;
- (4) *Inder Mohan Goswami and Another Vs. State of Uttaranchal and others*, AIR 2008 SC 251;
- (5) *Satish Mehra Vs. Delhi Administration*, 1996 DGLS (SC) 1111;
- (6) *R. Nagender Yadav Vs. State of Telangana and Another*, Criminal Appeal No.2290 of 2022, decided on 15.12.2022;
- (7) *Harish Dahiya @ Harish & Anr. Vs. The State of Punjab & Ors*, Criminal Appeal No.1614 of 2019 decided on 23.10.2019;
- (8) *Shrikant Purushottam Paranjape & Ors. Vs. State of Maharashtra*, Criminal Writ Petition No.2827 of 2023, decided on 30.09.2024
- (9) *Sanjay Kumar Rai Vs. State of Uttar Pradesh and another*, Criminal Appeal No.472 of 2021, decided on 07.05.2021;
- (10) *Union of India Vs. Prafulla Kumar Samal and another*, AIR 1979 SC 366.

33. Per contra, the learned APP canvassed that the complaint bearing R.C.C. No. 433 of 2012 specifically alleged that though one part of Survey No. 574 was owned by Mr. Mujahiddin, who had transferred the same by sale-deed in favour of one Mr. Vishwanathappa, the father of accused Nos. 13 and 14. The said transfer of land was effected by virtue of sale-deed dated 20.08.1966 in favour of the Municipal Council, Parbhani. Thereafter, Municipal Council, Parbhani transferred said land in favour of the Government I.T.I., and since then the said land is in possession and occupation of the complainant/Government I.T.I. However, the entry in the 7/12 extract in favour of Government I.T.I. was not effected and it was remained in the name of father of the accused Nos. 13 and 14 and in the occupation and possession column the name of the Municipal Council, Parbhani is shown. However, the accused Nos. 13 and 14 in collusion with the revenue authorities mutated their names in the revenue record by taking undue advantage and by fabricating mutation entries as well as without issuing notice to the Government I.T.I. or the Municipal Council, Parbhani. Not only this, but the accused Nos. 13 and 14 in collusion with the other accused persons executed the sale-deed in respect of land bearing Survey No. 574.

Therefore, act of all the accused persons including present petitioner amounts cheating, forgery, dishonestly transfer of Government land in their favour. So also, the material available on record are sufficient to frame charges against the petitioner/Accused no. 12. Therefore, on 03.07.2012, the learned J.M.F.C. passed the order in R.C.C. No. 433 of 212 and directed an inquiry under Section 156(3) of Cr.PC. Therefore, the investigating Officer conducted thorough investigation and submitted the charge-sheet against all the accused including the present Petitioner / accused No.12.

34. The learned APP relied on the case of ***State Through Deputy Superintendent of Police Vs. R. Soundirarasu Etc., AIR Online 2022 SC 281***, wherein the Hon'ble Supreme Court in paragraph No. 59 observed thus:-

“59. In the context of trial of a warrant case, instituted on a police report, the provisions for discharge are to be governed as per the terms of Section 239 which provide that a direction for discharge can be made only for reasons to be recorded by the court where it considers the charge against the accused to be groundless. It would, therefore, follow that as per the provisions under Section 239 what needs to be considered is whether there is a ground for presuming that the offence has been committed and not that a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a

presumptive opinion as to the existence of the factual ingredients constituting the offences alleged would justify the framing of charge against the accused in respect of that offence, and it is only in a case where the Magistrate considers the charge to be groundless, he is to discharge the accused after recording his reasons for doing so.”

35. The learned APP further canvassed that earlier also the present Petitioner along with others have approached before this Court and had challenged the charge-sheet by invoking Section 482 of Cr.P.C. However, this Court passed an order holding that there is *prima-facie* material available on record to frame the charge against the Petitioner, hence, the proceeding cannot be quashed. Therefore, considering the observations made by this Court and evidence collected by the Investigating Officer, the material placed on record along with the charge-sheet, are sufficient to frame the charge, hence, no case is made out for discharge of the Petitioner accused. Therefore, the findings recorded by both the Courts below are just, proper and legal and no interference is called at the hands of this Court to disturb the said findings, hence prayed for dismissal of the Petition.

36. In order to frame charge under Section 415 punishable under Section 420 of I.P.C., it is necessary to go through the material available on record which shows that that the accused has

fraudulently or dishonestly induces and in collusion with the Accused Nos. 13 & 14 succeeded to deliver the land in question by taking undue advantage of mutation entries in the revenue record. Section 415 of I.P.C. is divided in two parts, the second speaks that a person by deceiving another, intentionally, induces the person so deceived to do an act, which causes or is likely to cause damage or harm, although the deceiver has not acted fraudulently or dishonestly. To frame the charge under Section 425 of I.P.C., it is necessary to go through the material available on record to show that the accused with an intention to cause or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects in injuriously, he commits the mischief.

37. For framing the charge under Section 468 of I.P.C., it is necessary to go through the material available on record which shows that that the accused has committed forgery, intending that the document or electronic record forged shall be used for the purpose of cheating. For framing the charge under Section 471 of IPC, it is necessary to go through the material available on record to show that

the accused has fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be forged.

38. In the case in hand the accused persons have acted by illegal means and conspired a criminal conspiracy to prepare the mutation entries in the name of accused Nos. 13 and 14 and thereafter they executed the sale-deed in respect of the land already transferred and in possession of Government I.T.I.

39. It is abundant clear that on 20.08.1966, original land owner Shri Vishwanath Govind Sakhare i.e. the father of accused Nos. 13 and 14 has sold entire land to the extent of 15 Acre 30 Gunthas out of Survey No. 574 in favour of Municipal Council, Parbhani. Therefore, Shri Vishwanath Govind Sakhare was neither the owner nor the possessor of the said land. Thereafter, on 26.03.1964, the Municipal Council, Parbhani, vide registered sale-deed No. 1839 of 1966, transferred the land admeasuring 60,000 Square Yard in favour of the Government I.T.I. However, again the Govt. I.T.I., further demanded for 12 Acres of land out of Survey No. 574 from the Parbhani Municipal Council. Accordingly, the State Government has

issued the Government Resolutions dated 16.08.1967 and 17.8.1967 and thereby sanctioned the proposal for the purchase of land admeasuring 18 Acres in consideration of Rs. 87,120/-. Thereafter 18 Acres land was transferred in favour of the Government I.T.I., Parbhani after the proposal was approved by the State Government and the Executive Engineer issued the letter to that effect. However, the name of Vishwanath Sakhare i.e. the father of accused Nos.13 and 14 was remained intact in the 7/12 extract. Therefore, taking undue advantage of said mutation entry in the revenue record even after execution of the registered sale-deed in favour of Government I.T.I., and in spite of showing entry in column of possession and occupier of revenue record in the name of Municipal Council, Parbhani, being occupier, the present petitioner along with other accused, executed sale deeds in their names just to defraud the real owner of the property.

40. It is the well settled principle of law that mutation entries in the revenue record do not confer the title. In the case of *Balwant Singh-vs- Daulat Singh (D) By Lrs., (1997) 7 SCC* it is held that, mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on

title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions. Thereafter, in the case of *Suraj Bhan-Vs- Financial Commissioner, (2007) 6 SCC 186*, it is held that, an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandhi have only “fiscal purpose”, i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of *Suman Verma v. Union of India, (2004) 12 SCC 5*; *Faqrudin v. Tajuddin (2008) 8 SCC 12*; *Rajinder Singh v. State of J & K, (2008) 9 SCC 368*; *Municipal Corporation, Aurangabad V. State of Maharashtra, (2015) 16 SCC 689*; *T. Ravi v. B. Chinna Narasimha, (2017) 10 SCC 259*; and *Ajit Kumar v. Darshan Singh, (2019) 13 SCC 70*.

41. However, in the case in hand, the accused Nos. 13 and 14 in collusion with the Talathi and Circle Inspector along with the help of the accused legal practitioner got mutated their names in revenue record and on the basis of same, the accused Nos. 13 and 14 in

connivance with the other accused Nos. 1 to 12 executed sale-deed in their favour just to deprive the right of the Government I.T.I., inspite of having knowledge that the accused Nos. 13 and 14 are not owners of the land in question, which has been already transferred by the original land owner in favour of the Municipal Council, Parbhani on execution of the registered sale-deed.

42. Needless to say that the Investigating Officer conducted thorough investigation and recorded statements of all the witnesses and thereafter filed the charge-sheet against the accused persons including the present Petitioner/accused No.12 for the offences punishable under Section 420, 425, 468, 471, 120-B read with 34 of I.P.C.

43. No doubt, in the case of ***Md. Ibrahim and others cited (supra)***, the Hon'ble Supreme Court has held thus:

“11. In short, a person is said to have made a ‘false document’, if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

12. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of

'false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted.

Section 420 IPC

13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows: (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. 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).

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 second 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.

A clarification

*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 UP vs. Ranjit Singh - 1999 (2) SCC 617".

44. In the case of ***Harish Dahia cited (supra)***, the Hon'ble Supreme Court has observed thus:

"Learned counsel for the respondent — State informs that in the trial, the prosecution evidence is over and the defence evidence is virtually at closure. She further submits that there is a reference in the charge-sheet to some compromise petition also signed by the deceased the contents of which are not known at this stage. Be that as it may, we find that the order dated 26.10.2018 refusing to discharge the appellants suffers 2 from abdication of jurisdiction. Merely because an earlier application to quash the entire prosecution under section 482 of Cr.PC. may have been dismissed, the Additional Sessions Judge could not decline to consider the application for discharge on that ground. The grounds for quashing a criminal proceeding and the reasons for allowing or disallowing an application for discharge preferred by the accused are completely different. The grounds falling for consideration in the two jurisdictions are completely different".

45. In the case of ***Union of India Vs. Prafulla Kumar Samal and another, cited (supra)***, the Hon'ble Supreme Court has observed thus:-

“This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Sessions Judge in order to frame a charge against the accused. Even under the Code of 1898 this Court has held that a committing Magistrate had ample powers to weigh the evidence for the limited purpose of finding out whether or not a case of commitment to the Sessions Judge has been made out.

Thus, on a consideration of the authorities mentioned above, the following principles emerge:

- (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 weight the evidence as if he was conducting a trial.”

46. In the case of ***Dinesh Gupta, cited (supra)***, it is observed thus:

“32. Most importantly, it needs to be noticed that it was a plain and simple transaction between the corporates. Even as per the complainant’s case, the short-term loan was advanced in the year 2010 for a period of one year. However, when the same was not returned, no steps were taken by the complainant to recover the same until the FIR in question was registered on 29.07.2018 i.e. 8 years & 7 months later.

33. Further, the complainant came to know about the merger of the Gulab Buildtech and Verma Buildtech with BDR in the year 2013 itself. However, even after dismissal of the application filed for recall of the merger order passed by the High Court on 15.03.2016, no steps were taken to recover the amount, except getting the FIR registered more than two years later. All these facts clearly reflect upon the ill designs of the complainant.

34. The entire factual matrix and the time lines clearly reflects that the complainant deliberately and unnecessarily has caused substantial delay and had been waiting for opportune moment for initiating false and frivolous litigation.

35. Further, it has been noticed by the High Court in the impugned order that on an application filed by the appellants, an Arbitrator was appointed by the Delhi High Court vide order dated 15.05.2019 to settle the dispute amongst the parties and the said matter was still pending.

36. In view of the aforesaid discussion, we find that the FIR in question, if proceeded further, will result in absolute abuse of process of court. It is a clear case of malicious prosecution. Hence, the same is required to be quashed.

37. The appeals are accordingly allowed. The impugned order passed by the High Court is set aside. FIR No.1271 of 2018 dated 29.07.2018 registered with Gautam Budh Nagar Police Station, Noida, and all subsequent proceedings thereof qua the appellants are quashed.

38. Before parting with the judgement, we are reminded of the opening remarks. The respondent Karan Gambhir having misused the legal system by lodging false and frivolous complaint with non-disclosure of necessary facts must bear its costs. The registration of FIR at Noida despite having registered offices of companies in question at Delhi shows a wishful forum shopping by the Complainant, casting serious doubts on their bona fides. The Complainant had already sought remedy against amalgamation order before the High Court and the High Court had dismissed the same. However, Complainant chose to again use judicial mechanisms to raise his grievances. A criminal complaint was filed and FIR was registered against appellants despite the commercial nature of dispute. Such ill intended acts of abuse of power and of legal machinery seriously affect the public trust in judicial functioning. Thus, we find ourselves constrained to impose cost on Complainant with a view to curb others from such acts leading to abuse of judicial remedies.

39. Considering the above facts and circumstances of the case, we impose costs of ₹25 lakhs on the respondent Karan Gambhir to be deposited within four weeks from today with the Registry of this Court. Upon receipt of the said amount, the same will be transmitted in equal amount to the SCBA & SCAORA to be utilised for the development and benefit of their members.”

47. In the case in hand, on perusal of the material placed on record along with the charge-sheet, it *prima-facie* appears that the complainant/Government I.T.I. is the owner and possessor of land

bearing Survey No. 574. Mr. Vishwanath Sakhare i.e. the father of accused Nos. 13 and 14 already transferred the land in question vide sale-deed dated 20.08.1966. He died on 19.07.1986, therefore the accused Nos. 13 and 14 were having the knowledge that their father had already sold the land in question to the Municipal Council and they do not have any right, title or interest over the said land. In spite of said fact they have mutated their names in the revenue record. So also by conspiring a conspiracy they have published the notice for the sale of said land in the daily Lokmat newspaper and thereafter, they have executed the sale-deed in favour of other accused persons including the present petitioner/Accused no. 12 just to defraud the Government. So also, the present Petitioner/accused No.12 filed a civil suit bearing R.C.S. No. 272 of 2021 on the basis of sale-deed allegedly executed in his favour by the accused Nos. 13 and 14 and sought decree of perpetual injunction against the Government I.T.I. Therefore, the act of the present Petitioner/accused No. 12 shows his intention to deceive the Government by conspiring the conspiracy with the accused Nos. 13 and 14 and thereby claimed that he is in possession of the land in question. Therefore, all these materials are sufficient to frame the charge.

48. It is trite settled principle of law that the defense of the accused cannot be considered while framing the charge. Section 239 of Cr.P.C. provides that if upon consideration of the Police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate think necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused.

49. Since the Petitioner/accused No. 12 along with accused Nos. 1 to 11 conspired with accused Nos. 13 and 14, executed the sale-deed of the said land, though they were having the knowledge that the land in question was already possessed and owned by the Government I.T.I./complainant, but only with a view to deprive the Government I.T.I., the present Petitioner/accused No. 12 purchased said land from accused Nos. 13 and 14 who got their names mutated in the revenue record in collusion with Talathi and Circle Inspector.

50. On perusal of record it *prima-facie* appears that the Petitioner/accused No. 12, who is a legal practitioner by profession appeared in the legal proceeding on behalf of the accused No. 13 & 14, who are legal heirs of Mr. Vishwanath Sakhare and he transferred

his land in favour of the Munciplal Council, Parbhani for valuable consideration and this fact was very much within the knowledge of the present petitioner still he entered into a contract with accused Nos. 13 and 14 and executed a Sale Deed dated 25.04.2011 in favour of him and other accused Nos. 1 to 11. Therefore, *prima-facie* it appears that the acts complained as against the present petitioner not amount to an offence but also it amount to professional misconduct.

51. The ingredients and the material placed on record, are sufficient to frame the charge as against the present Petitioner/ accused No. 12 and no substantial grounds are set out to interfere with the findings recorded by both the Courts below.

52. Accordingly, the Writ Petition is dismissed. Rule is discharged.

[Y. G. KHOBRAGADE, J.]

53. After pronouncement of the judgment, the learned counsel appearing for the Petitioner seeks extension of the interim order granted by this Court on 26.08.2024, for a period of one week.

54. This Court has passed the reasoned order and the trial of the matter is pending since 2015, and as such, no substantial reasons are found to extend the interim order.

[Y. G. KHOBRAGADE, J.]