MHPU060006442023.

ORDER BELOW EXH. 6 IN R.C.C. No.117/2023.

Accused No. 1 to 4 have filed instant application under Section 239 of the Criminal Procedure Code, 1973.

Contention in the application is as under :-

02. Accused submitted that, applicant have not played any role in commission of alleged offence and they are falsely implicated in alleged offence. The complaint has been filed after thought the dispute is of civil nature. The informant on the basis of same allegations have filed several complaints with different police stations and those complaints have been disposed off by those police stations. The informant on the basis of same allegations has filed S.C.C No. 3418/2018 in this Court for the offence punishable under section 138 of the Negotiable Instrument Act, 1881. The dispute amongst parties is of civil nature and several revenue and civil proceedings were and are going on such as RTS/880/2010 before the Sub Divisional Officer Pune. The nature of civil dispute converted into criminal proceeding. Accused No. 1 has filed complaint dated 03.12.2018 with the Hadapsar Police Station against the informant on the allegation of illegal dispossession over the disputed property. Accused No. 2 and 4 are women and have no concern in the present dispute and they are unaware about transaction between male member of the family with the informant. Merely to pressurize accused No. 2 and 4 have been falsely implicated the alleged sale deed is duly register without any fabrication and specifically states about existing loan on the plot. However the said loan has been duly paid by accused and the said plot is free from all encumbrances. The present complaint has been filed at delayed stage and said delay has not been explained. The principle of double jeopardy is applicable as proceeding under section 138 of the NI Act is pending and registration of FIR on the same allegation is not maintainable. There is no intention to cheat the informant the transaction was business related and accused have fully paid the amount which was lawfully payable. Hence there is no any prima-facie case against accused and therefore they may be discharge from alleged offence.

03. The informant has filed reply, at Exh. 10. The informant while denying contents in the application submitted that in the year 2015 the informant informed to Mr. Nikki Milani regarding sale of his land situated at Mundhawa and sought advise as to save the capital gain tax. At that time Mr. Milani advised the informant that in order to avail benefit capital gain tax exemption for sale of property the same was to be invested in another land. Thereafter, Mr. Milani introduced the informant to accused No. 1 and 2, who represented themselves that they are in business of construction having partnership firm under the name and style Shubh Ganesh Properties and wherein the entire family are the active partners and accused No. 1 and 2 are the ones who are looking after day to day business of firm. Accused No. 1 and 2 on behalf of their firm offered a deal to the informant regarding sale of flats situated at Magarpatta in a society by name Casa Feliz. The informant after discussion with family decline offer of accused No. 1 and 2 as informant's joint family were in interested in a bungalow. Accused No. 1 and 2 on behalf of their firm again represented that they have a piece of land which is free from all encumbrances situated at Kumar Meadows in Manjari and they are owners and in possession of the same. The informant believing in the representations and promises of accused No. 1 and 2 agreed to purchase said land for consideration of Rs. 1,50,00,000/-. The informant is also inform accused No. 1 and 2 about his plans and building a bungalow on said land. Accordingly, accused on behalf of their firm assured and promise to help the informant in constructing bungalow and the informant imposed trust on accused. Accused also represented the informant that it would be profitable and save money if the informant would purchase all necessary material for construction of bungalow in advance at ones and also assured to get the entire material at a discounted rate than market rate. However, the informant refused to make any advance payment to accused. On refusal to pay any advance by informant accused represented that he would be carrying out entire construction within a period of three years and on failure to do so assured and promised to pay a penalty of Rs. 3,15,00,000/-. The informant believing on representation and assurance of accused enter into work orders between the informant, his wife and the accused. The informant transferred Rs. 1,65,00,000/- vide RTGS into the account of firm of accused and as a security for work order accused No. 1 and 2 on behalf of their firm issued a cheque bearing No. 035013 of Rs. 3,15,00,000/- in favour of the informant. Then accused No. 1 requested the informant for Rs. 1,00,00,000/-, as he was under financial hardship and he assured to return said money within a period of one month. However, the informant was not having that much money and therefore he requested his sons by name Dipak and Rajesh to lend the said money and subsequently given to accused. The informant when demanded said borrowed money from accused he gave evasive replies and accused No. 1 and 2 deliberately avoiding phone calls. This thing clearly shows mala-fide and dishonest intention of accused No. 1 and 2. Then, the informant asked his son to visit the constructing site and they got shock to see that no constructing work being carried out by accused and no development of any sort. This act of accused was in furtherance of your common intention to cheat the informant. Due to this fraudulent and illegal acts of accused informant's wife suffered mental trauma and ultimately she passed away. On perusal of statement of Mr. Milani he clearly states that accused No. 1 and 2 has financial problems and to recover out from those problems they both decided to sale out their properties, which clearly describes defence of accused. Thus, the present application is false and baseless. Further the statement of Mr. Milani indicates that the deal between the informant and accused was clear and mutually agreed upon and no ambiguity and discrepancy as per terms of work order and business transaction. Accused No. 1 and 2 failed to fulfill obligation on their path as per terms and conditions. Further from statement of Mr. Milani also revealed that accused has received amount of Rs. 3,15,00,000/- into their account. Accused is habitual offender and a similar FIR was also registered at Hadapsar Police Station. So far as ground of Double Jeopardy is concerned the proceeding under section 138 of the Negotiable Instrument Act, 1881 and the present proceeding are having distant legal ingredients and do not overlap in any manner. The informant finally prayed for rejection of application.

04. Perused the application, say and record. Heard both the side.

05. It is settled law that, while dealing with discharge application only final report under Section 173 of the Criminal Procedure Code, 1973 needs to be perused and nothing else. The prosecution alleged that, the informant is having business of Tiles in the name and style "Sai Impex" and he used to pay Income-tax and GST regularly and he has paid the same till current year. Informant's Chartered Accountant by name Nikki Milani looks after affairs of Income-tax and GST and his office is located at Winners Court, Lullanagar, Pune. The informant, along with his son Dipak, time to time used to go in the office of Mr. Milani for getting information of profit and loss of business. In the year 2015, the informant had gone in the office of Mr. Milani for work of Income-tax. The informant was willing to invest his money to save capital gain tax, which he received by selling land at Mundhwa, Pune and this fact was within knowledge of Mr. Milani and therefore, the informant kept proposal before Mr. Milani in this regard. Accordingly, Mr. Milani introduced the informant with accused Nos.1 and 2, who were having Hindu Undivided Family business of construction in the name and style "Shubh Ganesh Properties" and all accused were partners thereof, but accused Nos.1 and 2 told the informant that, they are looking after business affairs. The informant told to accused Nos.1 and 2 about investment and accused Nos. 1 and 2 on behalf of their firm kept one proposal before the informant. Accused Nos. 1 and 2 offered the informant some flats at "Casa Feliz" in Magarpatta. The informant told accused Nos.1 and that, he will discuss the proposal with family and then he will tell. However, as informant's family was large and it was not possible to live in that flat together and his wife wanted to stay in Bungalow and therefore the informant declined that proposal. Then accused No.1 on behalf of their firm showed plot at Kumar Meadows in Manjari owned by them and the informant liked that plot and transaction fixed for Rs.1,50,00,000/-. The informant also told to accused No.1 and his firm his intention to construct Bungalow over said plot. At that time, accused No.1 told the informant that, he is a huge builder and he can construct a Bungalow through his firm. During that period, accused Nos.1 and 2 on behalf of their firm made false promise to the informant that, if material for Bungalow purchase at once it will be cheaper and save money and also told to get prepare work order. They also demanded advance amount from the informant. The informant, when denied for giving advance amount, accused Nos.2 and 3 gave assurance to him that, if they do not construct Bungalow within three years, they would give through their firm Rs.3,15,00,000/- as penalty. Thus, the informant after preparing work order paid Rs.1,65,00,000/- to the firm of accused Nos.1 and 2 through RTGS from the his account at Oriental Bank of Commerce, Wanawadi, Pune. Further, for security of work order, firm of accused No.1 issued a cheque of Rs.3,15,00,000/- bearing No.035013 drawn on the Shamrao Vitthal Co-operative Bank to the informant. The sale-deed was prepared by accused persons and the informant by keeping trust on them signed said deed. After few days, accused No.1 contacted the informant and gave false information that, he has demanded building material out of given money and he is going to start construction as soon as possible and demanded Rs.1,00,00,000/- for his need and for period of one month. The informant did not have that much amount and therefore he took that amount from his two sons by name Deepak and Rajesh and gave to accused No.1. At that time, for security, accused No.1 issued two cheques bearing Nos. 222852 and 225853 and gave assurance that, he will return that amount within one month. However, after one month accused Nos.1 and 2 avoided to return that amount. So the informant got suspicious and he told his sons to verify construction oh plot, but they did not see any construction there. The informant came to know that; he is being cheated. The informant did not get his Rs.1,00,00,000/- even after one year, therefore, he deposited those two cheques for encashment, but he came to know that, the bank account has been closed. Thus, accused Nos. 1 and 2 and their firm were having intention of cheating to the informant since inception and they hatched conspiracy. The informant, made inquiry and perused documents and came to know that, there was loan of the Kotak Mahindra Bank over plot and in spite of existence of loan accused entered into transaction with the informant without giving intimation of said loan. Due to this, informant' s wife suffered mental shock and passed away. The informant told incident to his power of attorney holder by name Swapnil Shelar, who made discussion with accused No.1 and his firm for completion of transaction and accused No.1 and his firm returned Rs.1,00,00,000/-. The said Swapnil Shelar has taken follow up with hope that, accused would repay Rs.3,15,00,000/-, as agreed, but accused No.1 turned his words and demanded plot and work order and then he will repay Rs.3,15,00,000/-. Accused No.1 also asked to Swapnil Shelar to bring sign of the informant on NOC, for which Swanil Shelar denied. Accused No.1 forced the informant to sign his proposal, which the informant denied. The advance amount which was given by the informant, accused Nos.1 and 2 used for investment. Hence, on informants first report C. R. 349 of 2021 has been registered against accused for the offence punishable under Sections 406, 409, 420, 120-B read with 34 of the Indian Penal Code,1860.

06. On perusal of allegations made in first report it appears that accused No. 1 and 2 have played key role in alleged offence as accused No. 1 and 2 sold their plot situated at Manjari in project by name Kumar Meadows to the informant. At that time accused No. 1 and 2 made false promise to the informant that they would construct bungalow and demanded advance amount from the informant for purchasing building material by saying that if building material purchase at once it will be receive in lesser amount. Accordingly, the informant gave Rs. 1,65,00,000/- to firm of accused No. 1 and 2 through RTGS from his bank account at the Oriental Bank of Commerce Br. Wanawadi, Pune. At that time for security of work order accused No. 1 and his firm issued a cheque of Rs. 3,15,00,000/- bearing No.035013 drawn on The Shyamrao Vitthal Cooperative Bank. Latter on after few days accused No. 1 approached the informant and by saying his financial difficulty demanded Rs. 1,00,00,000/- from the informant and by the informant by taking amount from his two sons gave to accused No. 1 at that time accused No. 1 assured that he will return that amount within a period one month and for return of said amount he gave two cheques bearing No. 222852 and 225853 drawn on the HSBC Bank Br. Bundgarden, Pune. Accused no. 1 and 2 however thereafter avoided to return Rs. 1,00,00,000/- and therefore the informant got suspicious and he verified development of construction of bungalow through his two sons but they did not see any construction on plot. Accused No. 1 and 2 were having intention to cheat the informant since inception. Accused No. 1 and 2 for their wrongful gain invested the amount given by the informant for construction of bungalow somewhere else. This aspect clearly made out offence under section 406, 409 and 420 read with 34 of the Indian Penal Code, 1860, as accused No. 1 and 2 have taken Rs. 1,65,00,000/- from the informant for construction of bungalow, but they have not made any construction on plot as per promise. Further statement of witnesses by names Nikki Hiranand Milani and Swapnil Shelar corroborates to contents made in FIR, as these witnesses also stated about role attributed by accused No. 1 and 2 in alleged offence. Further I perused work order dated 29.04.2015, which has been executed by accused No. 2 in capacity of Karta of HUF and witness No. 2 is accused No. 1. The said work order discloses about transaction for construction of bungalow took place between the informant and accused No. 1 and 2. Further transfer deed No. 2980/2015 dated 26.03.2015 shows that accused No. 2 sold plot No. B-13 situated at Manjari Budruk in project by name Kumar Meadows to the informant and his wife for consideration of Rs. 1,50,00,000/-. Further bank statement of informant's bank at Oriental Bank of Commerce Br. Wanawadi, Pune clearly shows that the informant has given amount to accused No. 1 on various dates through RTGS. Thus, the FIR, statements of the informant and witnesses coupled with documentary evidence clearly goes to show active involvement of accused No. 1 and 2 in alleged crime and they had intention to cheat the informant since inception, otherwise they made construction of bungalow as per work order dated 29.04.2015.

07. Now, I am coming towards role of accused No. 3 and 4. On perusal of statement of the informant as well as witness they have not stated single allegation against accused No. 3 and 4 about cheating and criminal breach of trust. These witnesses never alleged any specific overt act committed by accused No. 3 and 4. Whatever the allegations are made only against accused No. 1 and 2, as actual transaction took place between the informant and accused No. 1 and 2. The informant nowhere stated in his statement that he met single time either with accused No. 3 or with accused No. 4 and discussed about alleged transaction. No doubt as per informant's statement accused No. 1 and 2 acted through their HUF, but here, I am of the view that HUF is not a person and and work through members and in order to fix criminal liability upon any member of HUF there should be active involvement of that member in alleged crime along with mens rea. However as noted above neither the informant nor any witness specifically stated the role played by accused No. 3 and 4 in alleged crime. Further there is no signature of accused No. 3 and 4 on work order dated 29.04.2015. It is not case of the prosecution that all the members of HUF were present at the time of discussion of alleged transaction or all members of HUF abated for making alleged transaction. There is no specific overt act on the part of accused No. 3 and 4 stated by either of the witness of prosecution. Thus, statement of witnesses coupled with documentary evidence never indicates active involvement of accused No. 3 and 4 in alleged crime and there is no sufficient evidence available on record against them.

08. The accused relied upon following judgments :-

1] M/s. Procimax Engineers pvt. Ltd. Vs M/s. Seema Industries and Anr, 2000 ALL MR (Cri) 1749. Wherein the Hon'ble High Court set aside order of issue process against accused under section 420 of the Indian Penal Code, 1860 because the intention of the accused of not making payment was not from beginning. Here in the case hand from averments made in FIR clearly indicates that accused No. 1 and 2 were having intention to cheat the informant since inception, as accused No. 1 and 2 after transfer deed of plot made false promise that they will construct for the informant and for that purpose they demanded Rs. 1,65,00,000/- from the informant, which they received time to time from the informant, but they never made any construction over plot. This aspect clearly goes to show t hat accused No. 1 and 2 were having intention to cheat the informant since inception. Thus, the offence under section 420 of the IPC is clearly made out against them. Hence the ratio laid down in this judgment is not helpful to accused No. 1 and 2.

2] Kapil Agarwal and Ors. Vs. Sanjay Sharma, 2021 ALL SCR (Cri) 638. Wherein the Hon'ble Apex Court quashed and set aside FIR against the accused for the offence under section 406 and 420 of the IPC on the ground that said FIR did not have reference to the application of Section 156(3) of the Criminal Procedure Code. In the said case respondent No. 1 had filed application under section 156(3) of the Criminal Procedure Code, 1973 during pendency of complaint case for the offence under section 138 of the Negotiable Instrument Act. In application under section 156(3) of the Criminal Procedure Code, 1973 instead of directing to police to register the FIR the Ld. Magistrate decided to make inquiry by treating the same as complaint case. After two years of said application respondent No. 1 lodged FIR against the accused without stating fact of pending of application under section 156(3) of the Criminal Procedure Code, 1973. Thus, the Hon'ble Apex Court quashed and set aside said FIR and directed the Magistrate to proceed with the complaint case in accordance with law. In the case at hand the offence under section 420 of the IPC is clearly made out against accused No. 1 and 2. The facts of said judgment is altogether different from the facts of case in hand. Thus, the ratio laid down in the said judgment is not helpful to accused.

Considering the above discussion, I am of the view that, there is sufficient evidence against accused No. 1 and 2 and it cannot be said that, charge against accused No. 1 and 2 is groundless. Further there is no sufficient evidence against accused No. 3 and 4 and charge against them is groundless. With this I pass following order:-

ORDER

1. The application is partly allowed

2. The prayer of accused No. 1 and 2 for discharge from the offence punishable under sections 406, 409, 420, 120-B read with 34 of the Indian Penal Code, 1860 is rejected.

3. Accused No. 3 and 4 are discharged from the the offence punishable

under sections 406, 409, 420, 120-B read with 34 of the Indian Penal Code, 1860 vide section 239 of the Criminal Procedure Code, 1973.

4. PB and SB of the accused No. 3 and 4 stands cancelled.

AMIT ANIL KULKARNI

Digitally signed by AMIT ANIL KULKARNI
Date: 2026.07.09 17:17:13 +0530

Place : Pune.
Date : 09/07/2026.

(A.A.Kulkarni)
3rd Jt. Judicial Magistrate First Class,
Cantonment Court, Pune.