



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

CRIMINAL APPLICATION (APL) NO.1214 OF 2021

1. Nitin s/o Vinod Harne,
Aged 43 Years,
Occupation : Business,
R/o. Flat No.202,
Jogeshwari Dham Apartment,
Giripeth, Nagpur – 440010.

..... APPLICANT

// VERSUS //

1. State of Maharashtra through
Police Station Officer,
Police Station Ajni, Nagpur,
Taluka and District Nagpur.
2. Anil s/o Ramnarayan Tiwari,
Aged 56 Yars,
R/o. Plot No.36-A,
Jay Gurudeo Nagar,
Police Station, Ajni, Nagpur,
Taluka and District Nagpur.

....NON-APPLICANTS

Mr. Rohan Deo, Advocate for the applicant.
Mr. Nikhil Joshi, APP for the non-applicant No.1/State.
Mr. N. D. Khamborkar, Advocate for non-applicant No.2.

WITH

CRIMINAL APPLICATION (APL) NO.1282 OF 2021

1. Abhijit s/o Dilip Deshmukh,
Aged about 42 Years,
Occupation : Private Service,
R/o. Plot No.40, Vishwas Society,
Manish Nagar, Nagpur.
2. Vinodkumar s/o Vishambharnath Sharma,
Aged about 45 Years,
Occupation : Private Service,
R/o. Plot No.83, Shriram Nagar,

Uday Nagar Chowk, Nagpur.

..... APPLICANTS

// VERSUS //

1. State of Maharashtra through
Police Station Officer,
Police Station Ajni, Nagpur,
Taluka and District Nagpur.
2. Anil s/o Ramnarayan Tiwari,
Aged 56 Yars,
R/o. Plot No.36-A,
Jay Gurudeo Nagar,
Police Station, Ajni, Nagpur,
Taluka and District Nagpur.

....NON-APPLICANTS

Mr. Anshuman Sambre, Advocate for the applicants.
Mr. Nikhil Joshi, APP for the non-applicant No.1/State.
Mr. N. D. Khamborkar, Advocate for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 28.01.2026
PRONOUNCED ON : 10.02.2026

JUDGMENT :

1. Heard.
2. **Admit.**
3. Heard finally with the consent of the parties.
4. Both applications are preferred by the applicants therein
for quashing of the First Information Report (for short 'FIR') in
connection with Crime No.338/2021 registered with Police Station,
Ajni, Nagpur for the offence punishable under Sections 406, 409,
420, 465, 467, 468, 471 and 120B of the Indian Penal Code and

consequent proceeding arising out of the same bearing RCC No.5881/2025 pending before the learned Chief Judicial Magistrate, Nagpur.

5. The applicant in Criminal Application (APL) No.1214/2021 namely Nitin Harne had joined services at Deewan Housing Finance Corporation Limited (hereinafter referred as 'DHFL') at Nagpur, as Marketing Officer in insurance services on 15.07.2002. He was transferred in Home Loan Department of DHFL. The applicant was transferred at Ahmednagar as Branch Manager on 16.06.2005. On 20.10.2005, he resigned from DHFL. Again on 20.12.2011 he joined the services at DHFL as a Deputy Manager at Branch Dhantoli, Nagpur and served in DHFL till 31.12.2012 and thereafter, resigned from his job.

6. The applicant No.1 in Criminal Application (APL) No.1282/2021, joined services at DHFL as Assistance Manager Recovery on 21.01.2008 and worked in the said department till 22.02.2013. At the time of leaving the job, he was working as Deputy Manager of Recovery, whereas applicant No.2 had worked at DHFL, Nagpur as a Branch Manager. The applicant No.2 served in DHFL from 04.07.2006 to 26.10.2007.

7. The non-applicant No.2 complainant had approached the DHFL for availing financial assistance for purchase of immovable property. On verification of his loan proposal, DHFL had sanctioned

loan of Rs.3,00,000/- in favour of the non-applicant No.2. Accordingly, the agreement was executed between DHFL and non-applicant No.2 on 24.10.2002. As per the agreement, the non-applicant No.2 has to repay the loan amount by way of monthly installment of Rs.3,282/- upto 31.03.2018. As the non-applicant No.2 has committed default in payment of monthly installment and issued a cheque of Rs.32,154/- in favour of DHFL dated 14.09.2006 vide cheque bearing No.116755. The said cheque was presented for encashment but the same was dishonoured for the reason 'funds insufficient.' Due to the dishonour of the cheque, the DHFL has taken recourse under the provisions of the Negotiable Instruments Act, 1881 by presenting complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred as 'N.I. Act') bearing SCC No.20821/2006. Subsequently, the said complaint came to be dismissed.

8. As the non-applicant No.2 failed to pay the monthly installment as agreed towards the loan amount, the said loan account was classified as NPA by DHFL and consequently the recourse of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as 'SARFAESI') was taken by the DHFL by issuing the notice under Section 13(2) of the said Act of 2002. The DHFL has filed an application under Section 14 of the said Act bearing Miscellaneous

Application No.52/2010. On 22.03.2012, learned District Magistrate, Nagpur by its order allowed the application under Section 14 and thereby permitted the DHFL to take physical possession of the secured assets (immovable property). On 23.05.2012, the DHFL had taken possession of the secured assets (immovable property). On 28.05.2013, the property was auctioned and the DHFL has executed sale deed in favour of the auction purchaser namely Ajay Shankar Ramteke for valuable consideration of Rs.7,60,000/-. In the meantime, on 16.05.2011, the non-applicant No.2 had filed a complaint under Section 12 of the Consumer Protection Act, 1980 against the DHFL before the learned District Consumer Disputes Redressal Forum, Nagpur. The said complaint was registered as Complaint No.270/2011. On 21.01.2014 the non-applicant No.2 also filed proceeding before the learned Debts Recovery Tribunal, Nagpur, challenging the order dated 22.03.2012 passed by the learned District Magistrate, Nagpur in Miscellaneous Application No.52/2010. The Presiding Officer, Debts Recovery Tribunal, Nagpur has rejected the application of the Non-applicant No.2 which was filed for condonation of delay on 28.12.2015. On 16.07.2021, the non-applicant No.2 approached to the Ajni Police Station and lodged a report against the present applicants and other co-accused alleging misappropriation of the amount which he has paid towards the loan installment, preparation of the forged document and using the same as genuine one. As per the allegations, after

disbursement of the loan, he agreed to repay the loan in monthly installments of Rs.3,282/-. The loan was sanctioned to him by the DHFL on 24.10.2002. As per his allegations, at the time of sanctioning of the loan 16 blank cheques were obtained from him by DHFL as well as policy in his name and policies in the name of his daughters are also given by way of security to the DHFL. He further alleged that the company has withdrawn an amount of Rs.3,500/- by using cheque bearing No.116745. However, the said amount was not shown to be deposited in his loan account. He further alleged that on 06.08.2004 the applicant Nitin Harne obtained from him an amount of Rs.20,000/- and cheque of Rupee bank bearing No.128037. However, the amount of Rs.20,000/- was not shown to be deposited in his loan account. Thus, the sum and substance of his allegation is that though he paid the amount of Rs.33,300/-, but in the account statement it was shown that towards the repayment of loan he has paid Rs.13,300/-. Likewise, he has paid Rs.40,000/- on 29.11.2004 vide receipt No.18488 but same was shown to be paid as Rs.4,000/-. Similarly, an amount of Rs.30,600/- was paid by him on 08.08.2006 which was also not shown in the loan amount. With these allegations, the present applicants are arraigned as an accused in the Crime No.338/2021.

9. After registration of the crime, the statements of the relevant witnesses are recorded, account statements of the loan

account of the complainant were also collected and after completion of the investigation, the charge sheet came to be filed against the present applicants.

10. Heard learned Counsel Mr. Rohan Deo in Criminal Application (APL) No.1214/2021. He submitted that with the false and baseless allegations, the present applicant Nitin Harne was implicated in the alleged offence. He submitted that the applicant is an employee of Deewan Housing Finance for the period 15.07.2002 to 20.10.2005. The non-applicant No.2 has obtained loan from DHFL and as he failed to repay the loan as agreed, the SARFAESI proceeding was initiated against him. In view of the order passed by the learned District Magistrate on 22.03.2012 possession of the immovable property of the non-applicant No.2 was taken on 23.05.2012. The non-applicant No.2 though filed various proceedings, but not succeed in the proceedings and therefore, this false complaint came to be lodged approximately after six years after the Presiding Officer, Debts Recovery Tribunal rejected his application for condonation of delay. He submitted that as far as the allegation levelled against the present applicant that he obtained the money from the wife of the complainant and not deposited the same is not substantiated by any material. On the basis of the omnibus allegation, he arraigned as an accused. He further submitted that the pleading raised in the consumer

complaint and the allegation levelled in the FIR are contrary to each other. After exhausting the remedies, this report came to be lodged. In view of that, the application deserves to be allowed.

11. Learned counsel Mr. Anshuman Sambre in Criminal Application (APL) No.1282/2021 submitted that on perusal of the recitals of the FIR and entire investigation papers, except the allegation against the applicant No.1 that when he had been to take the possession of the immovable property of the non-applicant No.2, he has outraged the modesty by holding the hand of daughter of the complainant and removed her from the house, there is absolutely no allegation regarding misappropriation or preparing the forged documents or cheating on his part. As far as the applicant No.2 is concerned, none of the statements discloses any specific act or any overt act on his part or his involvement in the alleged offence. He submitted that the recitals of the FIR, the statements of the witnesses, nowhere discloses any role to the present applicants. Thus, on the basis of omnibus, general and vague statement, the applicants are arraigned as an accused. He submitted that as far as the allegation that the applicant No.1 has outraged the modesty of the daughter of the non-applicant No.2 regarding the said incident, the separate crime is already registered. He submitted that even accepting the allegation as it is, at the face value that the applicant No.1 has hold the hands of the

daughter of the complainant and dragged her out of the house by no stretch of imagination it can be said that it was with a sexual intent and thereby he committed an offence outraging of modesty. Except that allegation, nothing incriminating is revealed during the investigation and therefore, in absence of any *prima facie* case, the application deserves to be allowed. He placed reliance on **K. Virupaksha and another Vs. State of Karnataka and another, (2020) 4 SCC 440.**

12. Per contra, learned APP strongly opposed the said contention and submitted that the recitals of the FIR, statement of the informant, statement of the wife of the complainant, extract of the statement accounts and the communication issued by the co-accused Nitin Harne discloses the *prima facie* material against the present applicants. In view of the parameters laid down by the Hon'ble Apex Court in the case of **State of Haryana and others Vs Bhajan Lal and others** reported in **1992 Supp. (1) SCC 335**, the *prima facie* case is made out against the present applicants, and therefore, the application deserves to be rejected.

13. Learned counsel Mr. N. D. Khamborkar for the complainant/non-applicant No.2 endorsed the same contention and invited my attention towards the statement of the accounts as well as the communication issued by the other applicants in Criminal Application (APL) No.1214/2021. On the basis of the material, he

submitted that there is sufficient material to proceed against the present applicants, and therefore, the application deserves to be rejected.

14. The law is settled as far as the quashing of the FIR is concerned. In the case of State of **State of Haryana and others Vs Bhajan Lal and others** referred supra, the parameters for quashing of the FIR are laid down which are reproduced as under:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just

conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

15. Thus, the jurisdiction under Section 482 of the Code of Criminal Procedure is extraordinary in nature and is to be exercised with great caution. The mini trial at this stage is not permissible. The only requirement is to examine whether the uncontroverted allegations as contained in the FIR at their face value disclosed the commission of any cognizable offence. Thus, the principle of law initiated by the Apex Court in a series of decisions relating to the exercise of extraordinary power under Article 226 of the Constitution of India or the inherent power under Section 482 of the Code of Criminal Procedure, the present case requires to be examined. On perusal of the FIR, it reveals that the present applicants are the employees of DHFL, serving at a higher positions. Undisputedly, the non-applicant No.2 has approached to the DHFL for financial assistance. Accordingly, the financial assistance was

given to the non-applicant No.2 by sanctioning the loan on 03.10.2002. As per the agreement between the DHFL and the non-applicant No.2, he agreed to repay the loan in monthly installment. There is no dispute that the non-applicant No.2 failed to pay the loan amount and therefore, the DHFL deposited cheque bearing No.116755 of Rs.32,154/-, which was issued against the outstanding amount, but the cheque was returned with endorsement 'funds insufficient' and therefore, the proceeding under Section 138 of N.I. Act was initiated against the non-applicant No.2. Undisputedly, on 29.06.2009 the said complaint registered as SCC No.20821/2006 and dismissed for want of prosecution. Subsequently, the loan account of the non-applicant No.2 was classified as NPA due to the failure of the non-applicant No.2 to pay the monthly installment and thereby the recourse under the SARFAESI Act was taken. In view of the order passed by the District Magistrate dated 22.03.2012 permitting to DHFL to take physical possession, the DHFL has taken possession of the secured assets on 23.05.2012. The said property was auctioned on 28.05.2013 and the DHFL has executed a sale deed in favour of the auction purchaser namely Ajay Shankar Ramteke by accepting the consideration amount of Rs.7,60,000/-. Thereafter, the non-applicant No.2 has filed a complaint under Section 12 of the Consumer Protection Act before the learned District Consumer Disputes Redressal Forum, Nagpur. The non-applicant No.2 had

also filed a complaint before the DHFL, but the same was dismissed and thereafter, the present FIR came to be lodged after six years.

16. On perusal of the entire investigation papers, as far as the allegation against the applicant Nitin Harne in Criminal Application (APL) No.1214/2021 is concerned, which specifically stated by the informant as well as in the statement of the wife of the informant. This aspect is further substantiated by the statement of the accounts and various receipts filed on record which shows that the despite receipts were issued regarding the payment to the non-applicant No.2, but the said amounts were not shown in the loan account of the non-applicant No.2. As per the allegations, the applicant Nitin Harne has obtained the amount on 06.08.2004 from the wife of the non-applicant No.2, but the said amount was also not shown in the loan account of the present non-applicant No.2. This fact is further substantiated by the letter issued by the applicant Nitin Harne wherein he specifically admitted that due to the technical reasons, the said amount was not shown in the account statements. The subsequent letter issued by the Branch Manager DHFL, Bhivapur Branch, Dhantoli also discloses that the employees of the DHFL have scored in some receipts and added some amounts and inquiry was held against them and they were removed from the services. Thus, as far as the applicant Nitin Harne is concerned, against whom the allegation is substantiated by

the documents also. Thus, there is a *prima facie* material against the applicant Nitin Harne. As far as the delay is concerned, admittedly he lodged the complaint in the year 2021. But considering the fact that initially, he approached to the Debts Recovery Tribunal (DRT), but he could not get the relief and therefore, lastly, he has taken the assistance of lodging of the FIR. Merely because there is a delay in lodging the FIR and considering the serious allegations against the present applicant would not be sufficient to quash the FIR against the applicant Nitin Harne against whom the specific allegations are levelled by the non-applicant No.2 and the same are substantiated by the documentary evidence. His involvement in the present crime reveals from the investigation papers.

17. As far as the applicants in Criminal Application (APL) No.1282/2021 are concerned, admittedly, there is no allegation against them that they have either obtained the money from the non-applicant No.2 or any family members and not deposited the same. As far as the applicant No.2 in the said application namely Vinodkumar Sharma is concerned, absolutely there is no reference of his name either in the statement of the informant or his wife or any other statements. The documentary evidence also nowhere shows his involvement in the alleged offence. As far as the applicant No.1 Abhijit Deshmukh is concerned, only one incident is noted against him that on 23.05.2012. He along with the other

officials had been to the house of the non-applicant No.2 for taking possession of the immovable property and at that time, he allegedly outraged the modesty of the daughter of the non-applicant No.2 by holding her hand and dragged her out of the house. Regarding the said incident, the separate FIR is already lodged vide Crime No.32/2015. Except that allegations as far as the present crime is concerned, there is no allegation that either he has created a forged documents or obtained the money from the non-applicant No.2 and not deposited the same in the loan account of the non-applicant No.2.

18. The basic requirement to bring home the accusation under Section 467 of IPC is that there has to be (i) commission of forgery; (ii) that such commission of forgery must be in relation to a document purporting to be (a) a valuable property; or (b) a will; or (c) an authority to adopt a son; or (d) which purports to give authority to any person to make or transfer any valuable security; or (e) the receive the principle, interest or dividends thereon; or (f) 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 (g) an acquittance or receipt for the delivery of any movable property or valuable security. The offence under Section 467 is an aggravated form of the offence under Section 466, IPC.

19. To constitute the offence punishable under 468 of IPC the requirement is (i) Commission of forgery, (ii) that he did so intending that the document or electronic record forged shall be used for the purpose of cheating.

20. The ingredients of offence of cheating described in Section 415 is that "Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"." To hold a person guilty of cheating as defined under Section 415 of the IPC, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. In other words, Section 415 of the IPC which defines cheating, requires deception of any person.

21. In the light of the above definition, admittedly, as far as the applicant in Criminal Application (APL) No.1214/2021 is concerned, the allegation is substantiated by the material which is collected during the investigation sufficiently shows the involvement of the present applicant, at this stage, the dishonest intention of

said applicant Nitin Harne can be inferred. As far as the other applicants are concerned, apparently there is no material to connect them with the alleged offence, in absence of the *prima facie* material showing their involvement either creating a forged documents or accepting the money and not depositing the same. After applying parameters laid down by the Hon'ble Apex Court in the case of **State of Haryana and others Vs Bhajan Lal and others** referred supra if the facts of the present case are considered and the evidence collected during the investigation, admittedly, offence is made out against the applicant Nitin Harne, but the offence is not made out against the applicants Abhijit Deshmukh and Vinodkumar Sharma. In view of that, the Criminal Application (APL) No.1214/2021 deserves to be rejected, whereas the Criminal Application (APL) No.1282/2021 deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The Criminal Application (APL) No.1214/2021 is hereby **rejected**.
- (ii) The Criminal Application (APL) No.1282/2021 is **allowed**.
- (iii) The FIR in connection with Crime No.338/2021 registered with Police Station Ajni, Nagpur, District Nagpur for the offence punishable under Sections 406, 409, 420, 465, 467, 468, 471 and 120B of the Indian Penal Code and the consequent proceeding arising out of the same RCC No.5881/2025 pending before the Chief Judicial Magistrate,

Nagpur, are quashed and set aside against the applicants Abhijit s/o Dilip Deshmukh and Vinodkumar s/o Vishambharnath Sharma.

Both the applications are disposed of.

(URMILA JOSHI-PHALKE, J.)