



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 178 OF 2012

Sunil s/o Shamsundar Hedda
Age: 32 years, Occu: Advocate & Agril.,
R/o. Samarth Nagar, Osmanabad
Tq. & Dist. Osmanabad

... PETITIONER

VERSUS

1. The State of Maharashtra
Through Police Station,
Tuljapur, Dist. Osmanabad
2. Anil s/o Panditrao Deshmukh
Age: 41 years, Occu: Agril.,
R/o Jaiphal, Tq. Kallam,
at present R/o Samtanagar,
Osmanabad Dist. Osmanabad
3. Naresh Nanakchand Agrawal] R-3 deleted as per
Age: 45 years, Occu: Business,] order dated
R/o Hadapsar, Pune-3] 18.01.2013
4. Timma s/o Somanna Wadar] R- 4 and 5 abated
Age: 32 years, Occu: Agril.,] as per order dated
R/o. Katgaon, Tq. Tuljapur,] 18.01.2013
Dist. Osmanabad]
]
5. Ambubai w/o Shankar Dangar]
Age: 60 years, Occu: Household,]
R/o Katgaon, Tq. Tuljapur,]
Dist. Osmanabad]

6. Yusuf s/o Farid Mulani
Age: 45 years, Occu: Agril.,
R/o Katgaon, Tq. Tuljapur,
Dist. Osmanabad
7. Shidheshwar s/o Shankar Konale
Age: 38 years, Occu: Agril.,
R/o Katgaon, Tq. Tuljapur,
Dist. Osmanabad
8. Janardhan Dattatraya Kulkarni
Age: 45 years, Occu: Service as
Talathi, Talathi Sajja, Katgaon,
Tq. Tuljapur, Dist. Osmanabad
9. M. M. Ghatekar
Age: 50 years, Occu: Service,
Sub-Registrar, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad
10. Balaji s/o Somnath Idagote (Wadar)
Age: 26 years, Occu: Agril.,
R/o Katgaon, Tq. Tuljapur,
Dist. Osmanabad

... RESPONDENTS

....

Mr. Mahendra B. Kolpe, Advocate for the Petitioner

Mr. V. M. Chate, APP for Respondent No.1 – State

Mr. Manish P. Tripathi, Advocate for Respondent Nos. 6, 7 and 10

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CORAM : Y. G. KHOBRAGADE, J.

RESERVED ON : January 17, 2026
PRONOUNCED ON : January 22, 2026

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With consent of both the sides, the petition is taken up for final hearing.

2. At the outset, it is submitted that as per the service report, respondent No.2 i.e. the original complainant is reported dead. The learned counsel for the petitioner submits that, the petitioner do not want to bring the legal heirs of deceased respondent No.2 on record because the respondent No.2 filed criminal complaint bearing R.C.C. No. 331 of 2008 in the representative capacity and as such, the petitioner has challenged the order dated 23.01.2022 passed by the learned Additional Sessions Judge in Criminal Revision Application Nos. 139 of 2009 and 140 of 2009, arising out of the order dated 30.11.2009 passed below Exh.12 and order below Exh.1 in R.C.C. No.331 of 2008. Since the petitioner does not want to bring the legal heirs of deceased respondent No.2 on record, therefore the petition as against respondent No.2 is abated. Accordingly, the petitioner proceeded against the remaining respondents.

3. It is further submitted that during pendency of the present petition, respondent Nos.3, 4 and 5 who are the original

accused Nos. 1, 2 and 3, respectively, i.e. Respondent No.3 Naresh Nanakchand Agrawal, respondent No.4 Timma Somanna Wadar and respondent No.5 Ambubai w/o Shankar Dangar, reported to be died. Therefore, their names are deleted from the array of the respondents.

4. The facts rise to the present petition are that, Respondent No.2 original plaintiff filed R.C.C. No.331 of 2008, for the offence under Sections 420, 467, 468, 471, 166 read with Section 34 of I.P.C. alleging that the agricultural land bearing Gat No.472 of village Katgaon, Taluka Tuljapur, District Osmanabad, purchased by respondent No.3 by creating false documents and without obtaining permission from the learned District Collector, Osmanabad as said land is pertaining to restricted ownership under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. On 14.01.2009, the learned Judicial Magistrate, First Class, Tuljapur, passed an order below Exh.1 and directed the complainant to examine witnesses before taking the cognizance, however, respondent No.2 / original complainant filed pursis Exh.9 on 12.02.2009 stating that he do not want to lead the evidence. Thereafter, on 12.02.2009, the learned J.M.F.C., Tuljapur, passed the order below Exh.1 in R.C.C. No.331 of 2008 and called inquiry under Section 202 of Cr.P.C. On

12.02.2009, the learned J.M.F.C., passed the order under Section 202 of Cr.P.C. and directed the Police Inspector, Tuljapur Police Station, to conduct inquiry.

5. On 17.07.2009, the Investigating Officer, submitted its report u/s 202 of Cri. P. C. stating that, as per the police report, two more accused i.e. present petitioner Sunil Shamsundar Hedda and one Balaji Somnath Idagote are involved while making false and fabricated entries in the land record and on the basis of said entries, the accused No.1 with connivance with the Revenue Officer accused No.5 Shri Sidheshwar Shankar Konale, the land in question sold under the sale-deed without obtaining permission of the learned District Collector, Osmanabad. Further said transaction of sale was done on the legal advise given by the present petitioner/accused who is legal practitioner. Therefore, respondent No.2/original complainant submitted an application Exh.12 seeking impleadment of the present petitioner and another Balaji Somnath Idagote as accused in said complaint. On 30.11.2009, the learned trial Court passed an order below Exh.12 and permitted to implead two additional accused including the petitioner.

6. The petitioner filed Criminal Revision Application No.139 of 2009 challenging order of issuance of process dated 30.11.2009 passed by the learned JMFC, Tuljapur below Exh. 1 in RCC 331 of 2008 for the offence punishable under Sections 420, 467, 468, 471, 166 read with Section 34 of I.P.C.. Whereas, the petitioner filed Criminal Revision Application No.140 of 2009, challenging the order dated 30.11.2009 passed below Exh.12 permitting for impleading as an accused under Section 319 of Cr.P.C.

7. On 23.01.2012, the learned Revisional Court, passed impugned separate Judgments and orders in Criminal Revision Application No. 139 of 2009 and 140 of 2009 and dismissed both the revisions.

8. The learned counsel for the petitioner canvassed that the petitioner is a legal practitioner at Osmanabad and being a legal practitioner, the petitioner orally advised his client i.e. original accused Nos.1 to 3 and on the basis of said advise the original accused Nos.1 to 3 allegedly acted. However, the petitioner is not involved while tampering any revenue entries. So also, the report dated 17.07.2009 submitted by the Inquiry Officer, does not reveal that the petitioner accused is directly or indirectly involved while

making entries in the revenue record i.e. 7/12 extract of Gat No.472 of mouje Kataon. The Report u/s 202 of Cri. P. C. submitted by the Investigating Officer disclosed that, the present petitioner accused gave legal advise to his client i.e. accused No.1 Naresh Nanakchand Agrawal, who in connivance with the accused No.6 Janardhan Dattatraya Kulkarni, the Talathi alledgilly prepared false 7/12 extract of the said land. Further, other duplicate person was shown as true owner of the land and executed the sale-deed. Therefore, merely the petitioner / accused allegedly given legal advise, it does not constitute offence punishable under Sections 420, 467, 468, 471, 166 read with Section 34 of I.P.C. Therefore, prayed for quashing and setting aside of the complaint as against the present petitioner as well as the impugned orders dated 23.01.2012 passed in Criminal Revision Application Nos.139 of 2009 and 140 of 2009.

9. In support of these submissions, the learned counsel for the petitioner placed reliance on the case of *Suo Motu Writ Petition (Criminal) No.2 of 2005 in Re: Summoning Advocates who give legal opinion or represent parties during investigation of cases and related issues*, wherein, the following questions were in consideration before the Hon'ble Supreme Court, which reads as under:-

“(i) When an individual has the association with a case only as a lawyer advising the party, could the Investigating Agency / Prosecuting Agency / Police directly summon the lawyer for questioning?”

“(ii) Assuming that the Investigating Agency / Prosecuting Agency / Police has a case that the role of the individual is not merely as a lawyer but something more, even then should they be directly permitted to summon or should judicial oversight be prescribed for those exceptional criterion of cases?”

10. In answer to these issues, the Hon'ble Supreme Court held in para Nos. 38 to 42 and 48 to 50, as under:-

“38. The question that arises is whether, “the professional brethren of good repute and competency” have to be associated in a summons issued to a lawyer by the Police under the BNSS in pursuance of the investigation of a crime. In resolving this vexed issue, we cannot but repeat that we are not concerned with a professional misconduct when considering the application of non-disclosure of confidential professional communications made by a client. On the contrary only the breach by an Advocate can lead to a charge of professional misconduct, with which we are not perturbed at the moment. We are herewith troubled with a coercion to make disclosure, by the investigating agencies. The contention also is that unless such attempts are thwarted, there would be breach of the privilege, resulting in an allegation of professional misconduct, which disclosure in any event cannot be used against the client, in evidence.

39. A professional misconduct of a medical professional is dealt with by the Medical Council of India, which now has been renamed as the National Medical Commission, a body of medical professionals. In Jacob Mathew⁵, it was held by this Court that when such medical negligence involves criminal liability also, then a professional body should examine whether the negligence alleged, in addition to the tortious liability, can result in a criminal liability, leading to initiation of a criminal investigation or prosecution. Likewise, a professional

misconduct of an Advocate is examined by a professional body, which is the Bar Council of India or the Bar Council of the States, regulated by a statutory procedure and providing hierarchy of authorities.

40. Not being disturbed with any aspect of professional misconduct resulting in criminal liability, we have to tackle the attempt of coercion on an Advocate to disclose the privileged communications he had with his client, which could jeopardise his client's interests, especially, without the consent of the client, which could in fact, lead to an allegation of professional misconduct. As we noticed from Section 132, the obligation of non-disclosure would not fetter the Advocate from disclosing any communication made in furtherance of any illegal purpose or any fact coming to the notice of the Advocate, in the course of his engagement, revealing a crime or fraud committed by his client after the commencement of the engagement. The exceptions are also very clear insofar as what would fall under the immunity of a privileged communication and what would fall outside it; delineated in the illustrations.

41. An Investigating Officer or an investigating agency is not oblivious of the law. The dichotomy insofar as a medical negligence resulting in criminal liability does not, as such arise in the case of an investigation carried on under the BNSS, which is carried on by a person informed in law and the provisions of the BSA. Ignorance or absence of domain knowledge does not squarely apply in a case where the I.O summons a lawyer, the powers of which are clearly fettered by the provisions of Section 132. Though distinct, it would also be an extension of the client's constitutional right against self-incrimination as found in Article 20(3) of the Constitution of India. When a person cannot incriminate himself, he cannot be prejudiced or incriminated by the statement of his counsel, only on the basis of the professional communications he had with his counsel, in confidence. This is why it has been said that a person cannot walk out of his counsel's office with a defaced privilege, which he had intact, when he walked into it. That too only by reason of the disclosures he made in his own interests, his defence and to further his chances in the adjudicatory process.

The Right to Legal Representation:

42. Moreover, when we look at the issue of a lawyer being summoned as a witness by the Investigating Officer or the Court, to speak about the transactions with his client, we have to also keep in mind the right of a person to legal representation, which is enshrined in the Constitution itself. The question arose as to whether a party in a suit could summon the counsel of the opposite party as a witness, before the Kerala High Court in *N. Yovus v. Immanuel Jose*¹⁷. The suit arising from a failed matrimonial proposal had reached the final stage when a petition was filed by one party seeking permission to cite the Advocate of the respondent as a witness. The Division Bench decision considering the issue, referred specifically to Rule 13 of Chapter 2 of Part VI of the Bar Council of India Rules, which requires an Advocate to decline a brief or not to appear in a case, in which he has reason to believe that he is a witness and if engaged it would be apparent that he is a witness on a material question of fact; who should not continue to appear as an Advocate, if he can retire without jeopardizing his clients interest. It was held that only if the Court after enquiry finds that examination of the Advocate as a witness is indispensable and the same would not jeopardise the interests of the party he represents, there could be summons issued which would result in disengagement of the Advocate. In that particular case, it was found that the summons was to prove a letter sent by the plaintiffs to the Advocate after the commencement of the proceedings and a compromise suggested by the Advocate. The summons was declined on the reasoning that even if something could be elicited from the exceptions contained in Section 126, it would be of little use in the case and the hardship caused to the client by depriving him of professional service of the counsel engaged by him would be far more.

48. We find the summons issued in the instant case to be illegal and against the provisions of Section 132 insofar as the Advocate has been summoned to know the true details of the facts and circumstances of the case in which he appears for the accused. We are surprised that the High Court, being a Constitutional Court, exercising the jurisdiction under Section

528 of the BNSS refused to interfere with the same. We find the reasons stated; of the Advocate having not responded to the summons and the investigation being stalled, to dismiss the petition, to be flawed & erroneous. It is also in abdication of the inherent powers conferred on the High Court, which the blatant breach of the rule against non-disclosure projects. The breach is not only of the evidentiary rule, which many jurisdictions accept as fundamental to the adversary adjudicatory scheme, but, in the Indian context, project infringement of fundamental rights; guaranteed against self-incrimination and effective representation of Counsel.

49. On a conspectus of the issues raised, as deliberated upon, we answer the first of the two questions referred to us by a Co-ordinate Bench of this Court, with an emphatic 'NO'. The investigating agency/prosecuting agency/the police cannot directly summon a lawyer appearing in a case to elicit the details of the case, unless there is something, the I.O has knowledge of, which falls under the exceptions, in which case it has to be specifically mentioned in the summons, which the lawyer summoned can challenge under Section 528 of the BNSS.

50. We also make it clear that any such summons issued as against a lawyer by an I.O has to be with the approval and satisfaction of the hierarchical Superior, not below the rank of a Superintendent of Police which satisfaction has to be recorded in writing and should mention the facts leading to the exception under Section 132, for which the summons is issued."

11. The learned counsel for the petitioner further relied on the case of ***Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao, (2012) 9 SCC 512***, wherein, the legal practitioner / advocate was sought to be impleaded in the crime of conspiracy on the basis of legal advise given by him i.e. alleged false opinion about ownership of the properties against which loans were obtained.

Under these circumstances, the Hon'ble Supreme Court held that, the liability of an advocate who gave legal opinion, would arise only when such an advocate could be shown to have been an active participant in a plan or conspiracy to defraud the bank.

12. Needless to say that, the petition as against the present respondent Nos. 3 to 5 i.e. original accused who are the main conspirators and they are died, hence, their names are already deleted from the array of party respondents. Similarly, the petitioner No.2 who is original complainant died, hence, the petition against him is abated. The other respondents have not contested the present petition.

13. It is not in dispute that respondent No.2 filed Criminal R.C.C. No.331 of 2008 alleging about making conspiracy and defrauding the government by tampering revenue record pertaining to get Gut No.472 admeasuring 1 H 69 R of village Katgaon, taluka Tuljapur, District Osmanabad and on the basis of said tampered revenue record, the respondents / original accused Nos. 1 to 3 in connivance with accused No.6 Revenue Officer executed sale-deed and mutated their names without obtaining prior permission from the District Collector though said land is prohibited under the provisions

of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act and the M.L.R. Code.

14. Needless to say that, in pursuance of the order dated 12.02.2009, passed by the trial Court in R.C.C. No.331 of 2008, the Investigating Officer submitted its report under Section 202 of Cr.P.C., wherein it is specifically stated that, the land bearing Gat No.472 of village Katgaon is prohibited and was allotted to one Timma Somanna wadar and respondent No.5 / accused No.3 Ambubai w/o Shankar Dangar. However, the original accused No.1, on the legal advise of the present petitioner accused, prepared bogus and false 7/12 extract of the said land and executed sale-deed, so also, in place of original land owner accused No.2 Timma Somanna Wadar, some another person Balaji Somnath Idagote, was stood as original owner and executed the sale-deed.

15. The inquiry report u/s 202 of Cri. P C., does not disclose that the present petitioner / accused who is legal practitioner was directly involved while preparing false 7/12 extract of the said land revenue record i.e. 7/12 extract of land Gat No.472. The inquiry report also not disclosed that any written lelgal advice was issued by the present petitioner to his client i.e. accused No.1 to prepare false

and bogus 7/12 extract of the said land. The allegations made in the complaint as well as the inquiry report dated 17.07.2009 does not appear that the present petitioner / accused added the original conspirator to prepare false 7/12 extract of Gat No.472 of village Katgaon. There is no evidence that the present petitioner/accused was also present personally while preparing the bogus and false 7/12 extract of the said land or he was present at the time of execution of the alleged sale-deed. Therefore, considering the law laid down by the Hon'ble Supreme Court, in the judgment reported in **2025 SCC OnLine SC 2320** and in the case of **Central Bureau of Investigation, Hyderabad, Vs. K. Narayana Rao**, cited (supra), it cannot be held that, the present petitioner/ ccused is involved while committing the offence punishable under Section 420, 467, 468, 471, 166 read with Section 34 of I.P.C.

16. The learned trial Court mechanically passed the order dated 30.11.2019, below Exh.12 in R.C.C. No.331 of 2008 and permitted to implead the present petitioner as accused in the original complaint and issued process against the present petitioner for the offence punishable under Sections 420, 467, 468, 471, 166 read with Section 34 of I.P.C.. Further, the learned Revisional Court passed the

impugned judgment and orders dated 23-01-2012 in Criminal Revision No.139 of 2009 and 140 of 2009 and dismissed both the revisions without considering the essential ingredients of the offences under Section 420, 467, 468, 471, 166 read with Section 34 of I.P.C.

17. Therefore, the order passed by the learned Trial Court on 30.11.2009, below Exh.12 as well as the order below Exh.1 in R.C.C. No.331 of 2008, so also, the impugned order passed by the Revisional Court in Criminal Revision Application Nos. 139 of 2009 and 140 of 2009 are not sustainable in eye of law, hence, same needs to quash and set aside. So also, the complaint as against the present petitioner / original accused No.1 is liable to be quashed and set aside.

18. In view of above discussion, I proceed to pass the following order:-

ORDER

- (i) The impugned orders dated 23.01.2012 passed by the learned Additional Session Judge, Osmanabad/Revisional Court in Criminal Revision Application Nos. 139 of 2009 and 140 of 2009, are hereby quashed and set aside.

- (ii) The Order dated 30.11.2009 passed below Exh.12 as well as the order dated 30.11.2009 below Exh.1 in R.C.C. No.331 of 2008 are quashed and set aside.
- (iii) The complaint bearing R.C.C. No.331 of 2008 as against the present petitioner is quashed and set aside.
- (iv) Rule is made absolute in above terms.
- (v) No order as to costs.

[Y. G. KHOBRAGADE, J.]

SMS