



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VINAY SARAF

CRIMINAL REVISION No. 5561 of 2025

SURESH PRADSAD KHARE

Versus

THE HIGH COURT OF MADHYA PRADESH

Appearance:

Dr. Anuvad Shrivastava - Advocate for the petitioner.

Shri Sandeep Kumar Shukla - Advocate for the Respondent No.1.

Reserved on – 18.02.2026

Pronounced on – 22.05.2026

JUDGMENT

Per: Justice Sanjeev Sachdeva

1. Petitioner impugns order dated 23.09.2025 passed by Judicial Magistrate First Class, Jabalpur in RCT No.9808 of 2022, whereby the application moved on behalf of petitioner under Section 227 of the Code of Criminal Procedure for discharge of the petitioner, was dismissed.



2. With the consent of the parties, arguments heard for the purpose of final disposal of the case.

3. FIR bearing Crime No.203/2017 was registered at P.S. Jatara District-Tikamgarh for the offences punishable under Section 420/34 of the Indian Penal Code upon the complaint of one Shailesh Kumar against the son of the petitioner named Rupesh Khare. Petitioner, who is a practicing lawyer has also been implicated in the case as co-accused later on and, therefore, petitioner moved MCRC No.43017/2018 for quashing of the FIR, which was came up for hearing and was decided by order dated 19.03.2020, whereby the learned Single Judge of this Court dismissed the petition on the ground that *prima facie* cognizable offence is made out and investigation is still incomplete.

4. During the pendency of MCRC No.43017/2018, Rupesh Khare also preferred MCRC No.2457 of 2019 under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the FIR bearing Crime No.203/2017 on various grounds *inter alia* territorial jurisdiction, which was came up for hearing on 27.04.2022, when the petitioner herein appeared as counsel for Rupesh Khare and argued the matter. Learned Single Judge after hearing the parties, recorded that the petitioner i.e. Suresh Prashad Khare, Advocate is liable to be issued a show-cause notice for committing fraud with the Court as the co-accused had appeared in the matter as counsel for the petitioner and



this fact was not disclosed in the petition that the petition preferred by the co-accused i.e. the present petitioner had already been dismissed. Learned single judge granted time to the petitioner to justify his appearance on behalf of the co-accused Rupesh Khare.

5. On the next date of hearing i.e. 05.05.2022, petitioner did not appear and his junior Mr. Indrajeet Singh Yadav, Advocate informed the Court that petitioner was indisposed and had not come to the Court. As the case was listed for admission, the matter was taken up by the learned Single Judge on the question of maintainability.

6. Question of maintainability was raised by the respondent/State on the ground that earlier petition being MCRC No.43017/2018 was filed by the co-accused i.e. the present petitioner though on different cause of action but claiming the same relief and already stood dismissed vide order dated 19.03.2020, which order was upheld by the Supreme Court. It was contended that a common petition had been filed on behalf of both the co-accused persons bearing MCRC No.10385/2017, which was withdrawn with liberty to file afresh by order dated 28.09.2018, therefore, the quashing petition on behalf of Rupesh Khare was not maintainable.

7. Considering the order of dismissal of MCRC No.43017/2018 filed by the present petitioner, learned Single Judge dismissed the petition as not maintainable. However, at the same time, learned Single Judge considered the conduct of the counsel for the petitioner



i.e. the present petitioner and held that as the earlier petition preferred by the co-accused (the present petitioner) had been dismissed by order dated 19.03.2020, petitioner could not argue the petition on behalf of co-accused as counsel, because he was having knowledge of the earlier order of dismissal. Learned Single Judge further held that as the petitioner was the co-accused in the criminal case and could not appear on behalf of co-accused thus such act of appearance amounts to mal practice and fell within the definition of fraud committed with the Court as he did not bring the aforesaid facts to the notice of the Court and committed an offence affecting the administration of justice provided under Section 340 of Cr.P.C.

8. Learned Single Judge issued direction to Principal Registrar (Judicial) of this Court to issue a show-cause notice to the petitioner as to why proceedings under Section 340 Cr.P.C. be not initiated against him and then to proceed further in the matter after considering Rule 3 of Bar Council of India, which prohibits lawyer to appear in the matter, in which he himself is a witness. Learned Single Judge opined that, as the petitioner was co-accused in the same case, thus he could not have appeared on behalf of the co-accused as counsel and such practice of an advocate amounts to misconduct. Learned Single Judge also issued a direction to the State Bar Council for taking an appropriate action against the petitioner under the provision of Section 35 of Advocates Act, 1961.



9. Principal Registrar (Judicial) issued show-cause notice on 09.05.2022 to the petitioner and petitioner submitted his reply on 24.05.2022. After receipt of the reply, Principal Registrar (Judicial) filed a complaint under Section 200 of Cr.P.C. against the petitioner for the offence punishable under Section 417 of IPC on behalf of High Court of Madhya Pradesh in the Court of Chief Judicial Magistrate, Jabalpur. Learned Magistrate after taking the cognizance upon the complaint under Section 417 of IPC against the petitioner, by order dated 25.11.2022 issued summons to the petitioner. After furnishing personal and bail bond, petitioner moved an application under Section 227 of Cr.P.C. read with Section 340 of Cr.P.C. for discharge, which was dismissed by learned Magistrate by impugned order dated 23.09.2025, which is under challenge in the instant criminal revision.

10. Learned counsel appearing on behalf of petitioner submits that when petition filed under Section 482 of Cr.P.C. on behalf of Rupesh Khare, the petition filed by the petitioner for quashing of the FIR was pending and therefore, there was no occasion for the petitioner to mention in the petition that the Court had already dismissed the petition of the co-accused. He further submits that the petitioner appeared in MCRC No.2457/2019 as counsel on the strength of *vakalatnama* executed by petitioner therein and has not committed any offence. He further submits that Rule 3 of Bar Council of India prohibits an advocate from appearing in a case, in which he himself is a witness on the ground that in due course of events, he will have to



appear before the Court and depose in the matter. There is no such prohibition for appearing on behalf of co-accused.

11. He further submits that no fraud was committed by the petitioner and the conduct of the petitioner does not fall under the definition of misconduct. He further submits that Section 340 of Cr.P.C. provides the procedure in the cases mentioned in Section 195 Cr.P.C. and offence under Section 417 or 420 of IPC is not covered under the ambit of Section 195 Cr.P.C. as the same provides for punishment of contempt of lawful authority of public servant for offences against public justice and for offences relating to documents given in evidence. It is submitted that in the present case, there is no such allegation leveled against the present petitioner and, therefore, the case is not covered under the provisions of Section 195 Cr.P.C. and consequently, no complaint was maintainable against the petitioner on behalf of the High Court of Madhya Pradesh to proceed under Section 340 Cr.P.C.

12. Learned counsel relied upon the judgment of the Constitution Bench of Supreme Court in *Iqbal Singh Marwah and Anr. Vs. Meenakshi Marwah and Anr.* 2005 4 SCC 370, wherein the Supreme Court has considered the scheme of Section 195 Cr.P.C. and held that for prosecuting for an offence enumerated in Section 195 Cr.P.C., the offence should relate to contempt of lawful authority of public



servants, offence against public justice or offence relating to documents given in evidence.

13. Reliance is also placed on the judgment of the Supreme Court in *Sasikala Pushpa vs The State of Tamil Nadu (2019) 6 SCC 477*, wherein the Supreme Court has held that fraud implies intentional deception aimed at achieving some wrongful gain or causing wrongful loss or injury to another. Intention i.e. *mens rea* is an essential ingredient to hold that a fraud has been played upon the court.

14. Learned counsel prays for setting aside of order dated 23.09.2025 whereby the application filed by the Petitioner for discharge has been dismissed and further prays for quashing of the criminal proceeding pending against the petitioner in RCT No.9808/2022.

15. *Per contra*, learned counsel appearing for the respondent – High Court of Madhya Pradesh opposed the petition and submits that petitioner was a co-accused in a case and was aware of the fact that a petition filed under Section 482 of Cr.P.C. was already dismissed by the learned Single Judge by order dated 19.03.2020, which was not interfered by the Supreme Court. Further that the petitioner had no authority to appear as counsel on behalf of co-accused in MCRC No.2457/2019 and argue the case and in this way, the petitioner has committed fraud upon the Court by not disclosing the fact that petitioner himself is a co-accused in the case and this fact came to the



knowledge of the Court when the objection was raised by learned counsel for the State.

16. He further submits that neither the co-accused can appear on behalf of another co-accused as a lawyer nor a second petition is maintainable on behalf of the co-accused, if the earlier petition preferred by the co-accused had already been dismissed. He prays for dismissal of the petition.

17. The gravamen of the allegations against the petitioner is twofold. Firstly, the fact of dismissal of the earlier quashing petition filed on behalf of the petitioner was not brought to the notice of the court by the petitioner and secondly, that petitioner has committed fraud upon the court in as much as he appeared as a counsel in a quashing petition filed on behalf of the co-accused, wherein he himself is an accused in the case, which is not permissible.

18. Reference may be had to the Judgment of the Supreme Court in *Amarsang Nathaji v. Hardik Harshadbhai Patel* (2017) 1 SCC 117, wherein the Supreme Court has held as under:

“6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Penal Code, 1860 (45 of 1860) (hereinafter referred to as “IPC”); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also,



still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340(1) CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See K.T.M.S. Mohd. v. Union of India (1992) 3 SCC 178). The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.”

19. The Supreme Court in *Amarsang Nathaji (supra)* has held that the mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Penal Code. It has to be shown that the false statement given and evidence fabricated with the intention of using the same at any stage in the judicial proceedings. Even thereafter the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340(1) CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution.

20. The Supreme Court in *Sasikala Pushpa (supra)* held that fraud implies intentional deception aimed at achieving some wrongful gain or causing wrongful loss or injury to another. Intention i.e. *mens rea* is the essential ingredient to hold that a fraud has been played upon the court.



21. Section 340 (1) Cr.P.C. reads as under :-

“340. Procedure in cases mentioned in Section 195.

(1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, (a) record a finding to that effect; (b) make a complaint thereof in writing; (c) send it to a Magistrate of the first class having jurisdiction; (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such magistrate; and (e) bind over any person to appear and give evidence before such Magistrate.”

22. Section 195 (1) Cr.P.C. reads as under :

“Section 195(1) Code of Criminal Procedure, 1973

(1) No Court shall take cognizance –

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate;



- (b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
- (ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or
- (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.”

23. Section 195(1) Cr.P.C. is applicable to offences punishable under sections 172 to 188 IPC and sections 193 to 196, 199, 200, 205 to 211 and 228 IPC when such offence has been committed in relation to any proceedings in any court. It has no applicability to Sections 417 or 420 I.P.C. Clearly the learned magistrate committed an error in taking cognizance of an offence under section 417 IPC on the basis of the complaint filed under Section 340 of Cr.P.C. against the petitioner.



24. The allegation against the Petitioner is that he concealed the dismissal order of MCRC No.43017/2018 and thus played a fraud upon the Court. It may be noticed that MCRC 2457/2019 was filed on 14.01.2019 and MCRC No. 43017/2018 was dismissed on 19.03.2020. So, there was no question of Petitioner suppressing the dismissal of the Petition filed by him. It may further be noted that MCRC No. 43017/2018 was filed on behalf of the Petitioner (Suresh Prasad Khare) and MCRC NO. 2457/2019 was on behalf of Rupesh Khare. Therefore, the allegation of suppression of the fact of dismissal of earlier petition preferred by co-accused is misplaced.

25. Further allegation is that the Petitioner appeared as a counsel for a co accused contrary to the Bar Council of India rules and thus played a fraud on the court.

26. Part VI (Rules Governing Advocates), Chapter II (Standards of Professional Conduct and Etiquette) Section– II (Duty to the Client) Rule 13 of the Bar Council of India Rules reads as under:

“13. An advocate shall not accept a brief or appear in a case in which he has reason to believe that he will be a witness, and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear as an advocate if he can retire without jeopardizing his client’s interest.”

27. Rule 13 of Bar council of India referred to above is under a section “Duty to Client” and not under Section – I “Duty to Court”. Seid Rule does not prohibit any co-accused to appear in a case as



counsel. We are unable to accept that by appearing on behalf of co-accused in the capacity of counsel, petitioner played a fraud upon the court. One should not lose sight of the fact that the Petitioner is an accused and appeared on behalf of the co-accused. The co-accused is none other than the son of the Petitioner. Further, it is also brought on record that State Bar Council has already dropped the proceedings against the petitioner at the threshold by order dated 26.02.2023 by holding that prima facie no case is made out to proceed further in the matter as the same is not covered under Section 35 of Advocates Act.

28. In view of the above, we are of the considered opinion that no offence of cheating is made out against the petitioner, who is a practicing advocate and appeared on behalf of a co-accused (his own son) as counsel in a quashing petition. He deserves to be discharged from the aforesaid offence and consequently, the impugned order dated 23.09.2025 passed in RCT No. 9808/2022 by the learned magistrate dismissing the application under Section 227 CrPC is set aside. The criminal proceedings pending against the present petitioner in RCT No.9808/2022 are quashed. Revision petition is allowed. There shall be no order as to costs.

(SANJEEV SACHDEVA)
CHIEF JUSTICE

(VINAY SARAF)
JUDGE

Shub