

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

CRIMINAL REVISION APPLICATION NO. OF 2025

DISTRICT : OSMANABAD.

Sanjay Hariram Agarwal,

..... APPLICANT

VERSUS

The State Of Maharashtra,

Through Police Station, Osmanabad,

.... RESPONDENT

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PLACE : AURANGABAD

DATE : 15/11/2025.


NIKHIL S. JAJU

ADVOCATE FOR APPLICANT.


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

CRIMINAL REVISION APPLICATION NO. OF 2025

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V E R S U S

The State Of Maharashtra,

Through Police Station, Osmanabad,

.... RESPONDENT

SYNOPSIS

SR NO	DATE	PARTICULARS
1	5.5.2002	That, FIR dated 05.05.2002, registered at Osmanabad Police Station, bearing C.R. No. 106/2002, on a complaint by the Divisional Registrar, Co-operative Societies, Latur, concerning transactions between Osmanabad District Central Co-operative Bank Ltd. ("ODCC Bank") and Home Trade Ltd. ("HTL") for 30 Crores. That, the proceedings were registered as R.C.C. No. 398/2002 before the Ld. Additional Chief Judicial Magistrate, Osmanabad.
2	7.8.2013 & 6.5.2014	That, the discharge application and submissions on draft charge filed by the Applicant were dismissed by orders dated 07.08.2013 and 06.05.2014.

II

3	08.05.14	That, by order dated 08.05.2014, the Ld. Magistrate framed charges against the Applicant (Original Accused) for offences under Sections 120, 406, 420, 468, 471 r/w 34 of IPC.
4		That, thereafter the trial proceeded and 23 Prosecution Witnesses have been examined, none of whom made any specific depositions against the present Applicant.
5		That, the Applicant filed an application under Section 216 of the Code of Criminal Procedure, 1973, seeking alteration of charges, inter alia, on the ground that charges under Section 406 (Criminal Breach of Trust) and Section 420 (Cheating) IPC are mutually antithetical and cannot legally co-exist.
6	13.10.25	That, the Ld. Additional Chief Judicial Magistrate, Osmanabad, by the impugned order dated 13.10.2025, erroneously rejected the said application, holding that the charges were properly framed in view of Section 221 Cr.P.C. as it was "doubtful which of the several offences the facts may constitute".
7		Being aggrieved and dissatisfied by the impugned order dated 13.10.2025, the Applicant has preferred this Criminal Revision Application.

III

POINTS TO BE CONSIDERED :-

1. Whether the Ld. Magistrate has committed a palpable error in law by sustaining charges under Section 406 IPC and Section 420 IPC simultaneously, when the said offences are legally antithetical and mutually exclusive, as authoritatively held by the Hon'ble Supreme Court in *Delhi Race Club Ltd. v. State of U.P.*?
2. Whether the Ld. Magistrate's reliance on Section 221 Cr.P.C. is legally sustainable, or whether it constitutes a misapplication of law, particularly when the Magistrate has failed to articulate any specific, reasoned doubt and has invoked the section to justify framing logically impossible, contradictory charges?
3. Whether the simultaneous framing of these antithetical charges causes grave and inherent prejudice to the Applicant, rendering a fair defense impossible and thereby vitiating the trial in violation of Article 21 of the Constitution?
4. Whether the Ld. Magistrate erred in failing to appreciate that the dispute, as per the charge-sheet, is fundamentally commercial and civil in nature, and that the continuation of criminal proceedings amounts to an abuse of the process of law?

ACT AND RULES :

1. The Code of Criminal Procedure, 1973 (Corresponding to Bharatiya Nagarik Suraksha Sanhita, 2023)
2. The Indian Penal Code, 1860 (Corresponding to Bharatiya Nyaya Sanhita, 2023)

AUTHORITIES :-

1. *Delhi Race Club Ltd. v. State of U.P.*, 2024 SCC OnLine SC 2248 (also cited as (2024) 10 SCC 690)

PLACE : AURANGABAD

DATE : 15/11/2025.


NIKHIL S. JAJU

ADVOCATE FOR APPLICANT.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. OF 2025.

DISTRICT : OSMANABAD.

IN THE MATTER OF SECTION 397 OF
CRIMINAL PROCEDURE CODE,
CORRESPONDING SECTION 438 OF
BNSS.

AND

IN THE MATTER OF ORDER DATED
13.10.2025, PASSED BY THE LD.
ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, OSMANABAD IN R.C.C.
NO. 398/2002.



1] **Sanjay Hariram Agarwal,**

Age : 60 Years, Occu, : Business,

R/o 7 Hari Sava Street, Kidderpore,

Kolkata-700023, West Bengal.

...APPLICANT

(Original Accused)

VERSUS

S. Hariram

1] The State Of Maharashtra,
Through Police Station, Osmanabad,
Tq. & Dist. : Osmanabad.
(Copy to be Served on the Public
Prosecutor at Bombay High Court
Bench At Aurangabad.)

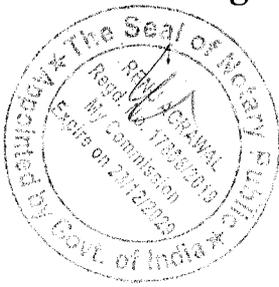
...**RESPONDENTS**

TO,
THE HON'BLE CHIEF JUSTICE AND
OTHER HON'BLE PUISNE JUDGES
OF THIS HON'BLE HIGH COURT OF
JUDICATURE OF BOMBAY BENCH
AT AURANGABAD.

HUMBLE REVISION APPLICATION OF
THE APPLICANT ABOVE NAMED.

MOST RESPECTFULLY SHOWETH AS UNDER:-

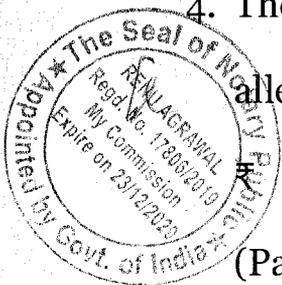
1. The present Revision Application is filed against the order dated 13.10.2025, passed by the Ld. Additional Chief Judicial Magistrate, Osmanabad in R.C.C. No. 398/2002, whereby the Learned Magistrate has rejected the Petitioner's application filed under



S. B. ...

Section 216 of the Code of Criminal Procedure, 1973, seeking alteration of charges.

2. The said case arises out of an FIR dated 05.05.2002, registered at Osmanabad Police Station, bearing C.R. No. 106/2002, on a complaint filed by the Divisional Registrar, Co-operative Societies, Latur. The case pertains to transactions between Osmanabad District Central Co-operative Bank Ltd. ("ODCC Bank"), and Home Trade Ltd. ("HTL") relating to the purchase and sale of Government Securities during 2001-2002.
3. The Petitioner is a Director of Home Trade Ltd., a company registered with SEBI and a member of the Bombay, National, and Pune Stock Exchanges. HTL is also registered in the books of Reserve Bank of India for dealing in Government Securities vide registration No. 6-11/82. The company was engaged in lawful trading of Government Securities through recognized exchanges. The alleged transactions were carried out in the ordinary course of business.
4. The prosecution case according to the record, is that all ten accused allegedly entered into a criminal conspiracy to cheat ODCC Bank of 30 crores. At the relevant time, deceased Accused No. 1 (Pawanraje Nimbalkar) was the Chairman of ODCC Bank and



S. N. Nimbalkar

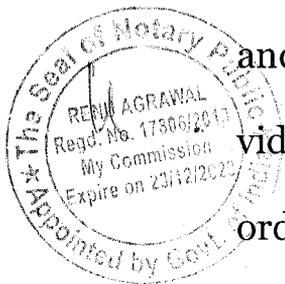
Accused No. 10 (Sunil Kedar) was the Chairman of Nagpur District Central Co-operative Bank Ltd. ("NDCC Bank").

5. It is alleged that Sunil Kedar approached Pawanraje Nimbalkar and offered a deposit of ₹ 30 crores from NDCC Bank to ODCC Bank, which was then to be invested in Government Securities through Home Trade Ltd. Pawanraje Nimbalkar allegedly accepted the deal and on 31st January 2002, the NDCC Bank transferred the amount of Rs. 30/- Crores into the ODCC Bank's account bearing Current Account No. 73/4701 in Maharashtra State Co-operative Bank.
6. It is alleged that on 1st February 2002, this amount was credited to the account of HTL in its account bearing Current Account No. 3A/17031 in Maharashtra State Co-operative Bank for purchase of Government Securities. Thereafter, Home Trade issued contract notes and receipts to ODCC Bank purportedly for the purchase of Government Securities. It is alleged that HTL further credited ₹ 29.99 crores to the NDCC Bank on 1st February 2002.
7. It is alleged that when ODCC Bank did not receive GOI securities, it demanded either delivery of securities or refund of money. Home Trade issued a cheque dated 20.04.2004 for ₹ 30.89 crores in favour of ODCC Bank, which was later dishonoured on 23.04.2004.
8. The first informant before the Police was Pawanraje Nimbalkar who submitted an application to Dy. Commissioner of Police, EoW CB

S. Narayan

CID Mumnai dated 29/04/2002 against Sunil Kedar, Chairman, Nagpur District Central Co-operative Bank Ltd. ("NDCC Bank") and others.

9. Another complaint was registered by Shri B.P. Rathod, Divisional Sub-Registrar, Co-operative Societies, Latur, at Osmanabad City Police Station alleging criminal breach of trust and cheating by the office-bearers of ODCC Bank. It was alleged that ODCC Bank invested ₹ 30 crores through Home Trade for purchase of Government Securities, but the bank did not receive physical securities and suffered a loss.
10. The complaint filed by Pawanraje was subsequently transferred to Osmanabad Police Station, and merged into the present proceedings as R.C.C. No. 398/2002.
11. Parallely proceedings under Section 138 of the NI Act were initiated and the first hearing date was on 15.12.2005, which were dismissed on 01.08.2015 for non-prosecution.
12. In proceedings in R.C.C. No. 398/2002, the discharge application and the submissions made under the draft charge were dismissed vide orders dated 07.08.2013 and 06.05.2014. True copy of the order dated 07.08.2013 is annexed herewith and marked as **Exhibit – A**. True copy of the order dated 06.05.2014 is annexed herewith and marked as **Exhibit – B**.



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13. The charges were framed against the Petitioner and other accused for offences under Sections 120-B, 406, 420, 468, 471 r/w 34 IPC by the order dated 08.05.2014. The copy of order dated 08.05.2014, is annexed herewith and marked as **Exhibit – C**.

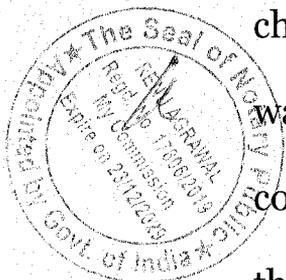
14. It is submitted that 23 Prosecution witnesses have been examined in this case so far and none of them had made any specific depositions against the petitioner.

15. Subsequently, The Applicant on 18.08.2025 filed an application under Section 216 Cr.P.C. before the Learned Magistrate, inter alia, contending that:

A. The charges framed under Sections 406 and 420 IPC are mutually antithetical and cannot legally co-exist; and

B. The entire dispute is commercial in nature, arising out of contractual dealings in Government Securities, and at best discloses a civil liability. True copy of Application dated 18.08.2025 is annexed herewith and marked as **Exhibit – D**.

16. However, by the impugned order dated 13.10.2025, the Learned Magistrate rejected the application, holding inter alia that both charges were properly framed in view of Section 221 Cr.P.C., since it was “doubtful which of the several offences the facts may constitute.” While doing so, the Learned Magistrate failed to apply the binding precedents specifically brought to the Court’s notice and



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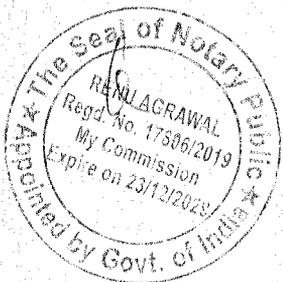
distinguished the judgment of the *Hon'ble Supreme Court in Delhi Race Club Ltd. v. State of U.P., 2024 SCC OnLine SC 2248*, without assigning any cogent or legally sustainable reasoning. The impugned order, therefore, reflects a clear non-application of mind to the ratio decidendi of binding authority and proceeds contrary to settled principles of criminal law. True copy of the 13.10.2025, passed by the learned Chief Judicial Magistrate, Osmanabad, is annexed herewith and marked as **Exhibit – E**.

17. Hence, the present Revision Petition is being filed on the following, amongst other, grounds:

:GROUNDS:

A. It is respectfully submitted that the Learned Magistrate has committed a palpable error in law by failing to heed the binding precedent of the Hon'ble Supreme Court which holds authoritatively that 406 and 420 IPC are antithetical and cannot co-exist in the same charge.

A.1. That the charge framing order shows that charges under Sections 406 and 420 IPC have been framed concurrently without distinguishing the distinct nature of the offences. Section 420 IPC requires proof of dishonest intention at the inception of the transaction, i.e., when inducing the delivery of property through deceit. Conversely, Section 406 IPC applies



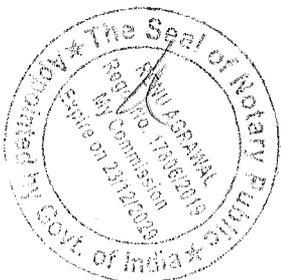
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when property is lawfully entrusted to the accused, who subsequently develops a dishonest intention and misappropriates it. These two offences cannot arise from the same act or transaction.

A.2. In order to constitute an offence under Section 406 IPC, the ingredients of criminal breach of trust as defined in Section 405 IPC must be satisfied. Section 405 IPC defines “criminal breach of trust” as follows:

“Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.”

A.3. The Hon’ble Supreme Court in ***Delhi Race Club Ltd. v. State of U.P., (2024) 10 SCC 690***, has delineated the essential ingredients as follows:



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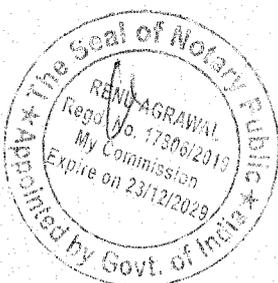
“In order to constitute a criminal breach of trust (Section 406 IPC): -

- 1) There must be entrustment with person for property or dominion over the property, and
- 2) The person entrusted: -
 - a) dishonestly misappropriated or converted property to his own use, or
 - b) dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:
 - i. any direction of law prescribing the method in which the trust is discharged; or
 - ii. legal contract touching the discharge of trust”

A.4. The very foundation of this offence is entrustment of property or dominion over property. Unless there is such entrustment, the offence of criminal breach of trust cannot arise. Then the element of mensrea in this offence appears at a subsequent stage i.e post lawful entrustment.

A.5. Section 415 IPC defines “cheating” as follows:

“Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent



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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'."

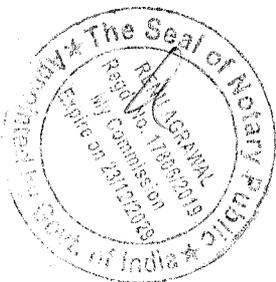
A.6. As delineated by the Hon'ble Supreme Court in **Delhi Race Club (Supra)** the following are the ingredients of Section 420 IPC:

"(1) Deception of any person, either by making a false or misleading representation or by other action or by omission;

(2) Fraudulently or dishonestly inducing any person to deliver any property, or

(3) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit"

A.7. Subsequent failure to fulfil a promise, or inability to perform a contract, does not by itself constitute cheating. Here, the



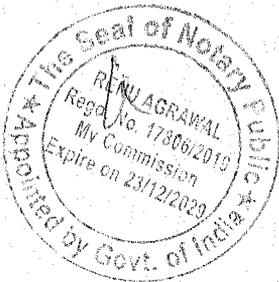
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intention to commit the act or to induce the person should be there from the beginning.

A.8. The Supreme Court, in *Delhi Race Club (supra)*, explicitly clarified this distinction, holding:

“38. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405IPC, punishable under Section 406IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 IPC, punishable under Section 420 IPC.

41. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent



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conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence.

42. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept.

43. There is a distinction between criminal breach of trust and cheating. **For cheating, criminal intention is necessary at the time of making a**



S. K. Sharma

false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.”

A.9. The Court further observed that

“55. It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating viz-a-viz criminal breach of trust. **Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC**



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(now BNS, 2023) are not twins that they cannot survive without each other.”

A.10. This proposition of law has been furthered in *Arshad Neyaz Khan v. State of Jharkhand, 2025 SCC OnLine SC 2058*.

A.11. In the impugned order dated 13.10.2025, however, the Learned Magistrate observed that “the facts of the above said authorities and the facts of the matter in hand are totally different.” With great respect, this observation constitutes a palpable error on the face of the record. The binding force of a precedent lies in its ratio decidendi, the principle of law declared by the Court. The *Delhi Race Club judgment (Supra)* does not rest on narrow fact-specific peculiarities but lays down a clear rule of law distinguishing the ingredients of Sections 406 and 420 IPC. In essence, the judgment reiterates what has been the law since decades. That legal distinction applies squarely to the present case, where the same transaction is alleged to involve both “entrustment” and “inducement.”

A.12. A court may distinguish a precedent only after demonstrating, through reasoned analysis, that the legal principle laid down therein is inapplicable to the facts before it. The impugned



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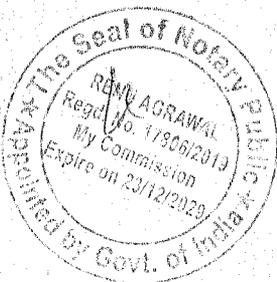
order contains no such reasoning, it merely asserts factual dissimilarity and declares the precedent inapplicable. This constitutes non-application of mind to binding authority and a clear misdirection in law.

A.13. The Ld. Magistrate failed to appreciate the well-settled legal position existing even before the Delhi Race Club judgment and recognised and reiterated in the Delhi Race Club judgment, while dismissing the application made under 216 of CrPC.

B. That the Learned Magistrate erred in law in invoking Section 221 of the Code of Criminal Procedure, 1973, without any specific doubt being demonstrated and without explaining how the confusion in offence actually existed.

B.1. It is respectfully submitted that Section 221 Cr.P.C., which permits framing of multiple or alternative charges “where it is doubtful which of several offences the facts which can be proved will constitute”, is an exception to the general rule under Section 218 Cr.P.C., and is to be applied sparingly and only when there is genuine uncertainty in law or fact as to the precise offence.

B.2. The jurisprudence has consistently held that invocation of Section 221 cannot be used to frame a basket of offences



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merely because the prosecution has chosen a wide canvas. The Court must record prima facie material showing a doubt as to which offence is made out, the nature of the doubt, and why charges are being maintained.

- B.3. In the present case, the impugned order dated 13.10.2025 relies on Section 221 Cr.P.C., stating that “it was doubtful which of the several offences the facts may constitute.” However, the Learned Magistrate has not identified the specific facts which gave rise to such doubt, recorded what was the doubt, or explained why either of the offences could not be chosen.
- B.4. The absence of any reasoning as to the nature of doubt renders the use of Section 221 misplaced. The Magistrate has simply recited the text of the provision without applying it to the material facts of the case. This is contrary to established law which demands that a court exercising power under Section 221 must articulate the reason for the doubt and confine the framing of multiple or alternative charges to the scope of that doubt.
- B.5. Moreover, the invocation of Section 221 in the context of antithetical offences is legally impermissible. If the two offences are mutually destructive, there is no genuine doubt as



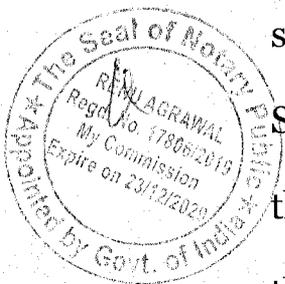
S. M. Agrawal

to which offence is made out, the law requires the court to decide which factual characterisation is prima facie applicable and frame accordingly. Resort to Section 221 in such a situation constitutes misuse of the exception and results in a distortion of the criminal process.

B.6. In view of the above, the learned Magistrate's invocation of Section 221 Cr.P.C., in the absence of any indication of real doubt, is manifestly improper and amounts to a material irregularity and error in law. The impugned order refusing to alter the charges on that basis is liable to be set aside.

C. That the Learned Magistrate erred in not recognising the grave prejudice caused to the Petitioner due to the simultaneous framing of antithetical charges under Sections 406 and 420 IPC.

C.1. The Learned Magistrate, while rejecting the Petitioner's application under Section 216 Cr.P.C., has observed that "nothing has been brought on record by the accused No. 7 to show that due to the framing of both the charges under Sections 406 and 420 IPC, actual prejudice has been caused to the accused in taking defence." It is submitted with respect, this finding is manifestly erroneous and contrary to settled principles of criminal law. The very act of simultaneously framing mutually destructive charges inherently and



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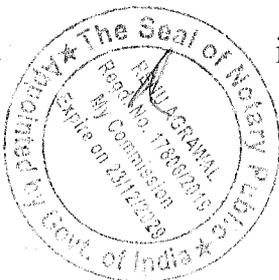
inevitably causes grave prejudice to the accused; such prejudice does not require separate proof by evidence.

C.2. The object of framing of charge, is to provide the accused with clear, precise, and unambiguous notice of the exact offence he is called upon to answer. Where charges are contradictory, uncertain, or based on inconsistent factual premises, the accused is deprived of this statutory and constitutional safeguard.

C.3. The offences of cheating and criminal breach of trust proceed on mutually exclusive premises, the former requiring proof of dishonest intention at the inception of the transaction, and the latter presupposing lawful entrustment and subsequent dishonest misappropriation. By allowing both charges to stand concurrently in respect of the same transaction, the Learned Magistrate has compelled the petitioner to defend two diametrically opposite factual narratives, an exercise which is legally impossible and procedurally unfair.

C.4. The prejudice caused to the petitioner is multi-faceted and self-evident:

- i. The petitioner is rendered uncertain of the exact nature of accusation, whether the prosecution alleges inducement at inception or misappropriation after entrustment. Such

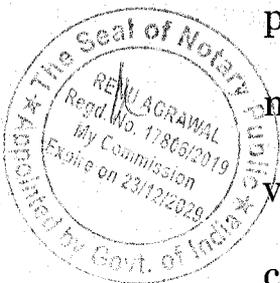


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uncertainty vitiates the clarity of the charge, defeating the purpose of Section 211 Cr.P.C.

- ii. The defence stand required for the two offences are mutually incompatible. To meet a charge of cheating, the Petitioner must show absence of dishonest intention at inception; to meet a charge of breach of trust, he must show absence of entrustment or dishonest conversion. These positions cannot be simultaneously asserted without undermining one another.
- iii. The evidentiary enquiry and cross-examination also become confused and inconsistent. The same witnesses and documents are examined to prove opposite legal hypotheses, exposing the Petitioner to the risk of contradictory findings and a fractured defence.

C.5. The Learned Magistrate is thus misdirected in insisting that the Petitioner must “bring on record” independent proof of prejudice. The prejudice here arises by operation of law, as a natural consequence of framing contradictory charges in violation of settled legal principles. Furthermore, the constitutional guarantee of fair procedure under Articles 14 and 21 of the Constitution mandates that the accused be tried upon a coherent, legally sustainable charge. A charge which is



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internally inconsistent and factually irreconcilable violates this guarantee and renders the trial process fundamentally unfair.

C.6. Accordingly, the finding that no prejudice has been caused is unsustainable both in law and on facts. The simultaneous framing of antithetical charges under Sections 406 and 420 IPC has caused grave and irreparable prejudice to the petitioner, undermining his right to a fair trial and resulting in a miscarriage of justice. The impugned order is therefore liable to be set aside on this ground alone.

D. It is respectfully submitted that the allegations contained in the charge-sheet, even if taken at their face value, disclose at best a civil dispute arising from a commercial transaction, and do not constitute any criminal offence under the Indian Penal Code. The invocation of criminal law in such circumstances is impermissible and amounts to abuse of process.

D.1. The Hon'ble Supreme Court, in a recent and strong disapproval of the growing tendency to criminalise civil and commercial disputes, observed in ***M/s Shikhar Chemicals v. State of U.P., 2025 SCC OnLine SC 1643***, as under:

“The Magistrate unfortunately remained unmindful of the fact that even as per the complainant's own



S. D. Agrawal

say the case is one of sale of goods and recovery of some balance amount... It was expected of the Additional CJM to know that in a case of sale transaction where is the question of any entrustment of goods so as to bring the case within the ambit of criminal breach of trust punishable under Section 406 of the IPC. ... We are not taken by surprise with the Magistrate exhibiting complete ignorance of law... However, we expected at least the High Court to understand the fine distinction between the two offences... It was expected of the High Court to know the well-settled position of law that in cases of civil dispute a complainant cannot be permitted to resort to criminal proceedings as the same would amount to abuse of process of law.”

D.2. The Court emphatically reiterated the settled principle that where the dispute arises from a commercial contract, such as sale, supply, or investment transactions, the remedy lies in civil law for recovery or damages, not in criminal prosecution. The criminal law cannot be used to enforce contractual obligations or to pressurise parties in commercial dealings.

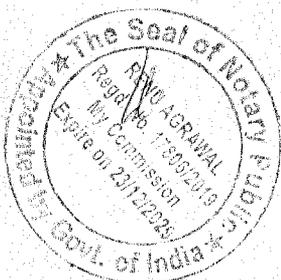


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D.3. In the present case, the admitted position from the charge-sheet and the documentary evidence is that the transactions between ODCC Bank and Home Trade Ltd. were commercial in nature, sale and purchase of Government Securities conducted on a principal-to-principal basis. The alleged failure to deliver securities or honour payment, at the highest, gives rise to a civil liability. The allegations do not disclose dishonest intention, deception, or any act done with criminal mens rea.

D.4. The recourse to criminal prosecution in respect of such transactions, especially where documentary evidence establishes the existence of valid contractual terms, arbitration clauses, and corporate records, is a clear attempt to give a civil dispute a criminal colour. Permitting such prosecution to continue would be contrary to the well-settled distinction between civil breach and criminal wrongdoing and would result in grave miscarriage of justice.

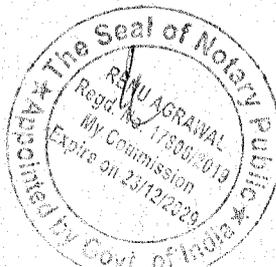
D.5. In view of the foregoing, it is submitted that the dispute between the parties is purely civil in nature, arising from a contractual transaction, and does not attract the ingredients of any of the penal provisions alleged. The continuation of criminal proceedings in such a matter is manifestly abusive



S. Agrawal

and contrary to settled law, and the same deserves to be quashed.

- E. In view of the foregoing grounds, it is most respectfully submitted that the impugned order dated 13.10.2025 suffers from patent legal infirmities, and misappreciation of binding precedents. The Learned Magistrate has erred in simultaneously sustaining charges under Sections 406 and 420 IPC, which are legally antithetical; has misapplied Section 221 Cr.P.C. without recording any genuine or reasoned doubt; and has failed to recognise the grave prejudice inherently caused to the Applicant by such contradictory framing of charges.
18. The impugned judgment and order is dated 14/11/2024. The revision is therefore filed within period of limitation.
 19. The applicant undertakes to give the English translation of Marathi documents as and when directed by this Hon'ble Court.
 20. The applicant seeks liberty to add, amend, modify or delete any of the paragraphs or ground of the present Criminal Revision as and when it is necessary.
 21. The applicant has not filed any other application before any other court, touching to the subject matter of this Criminal revision.
 22. The applicant undertakes to remove the office objections, if any, as and when required.

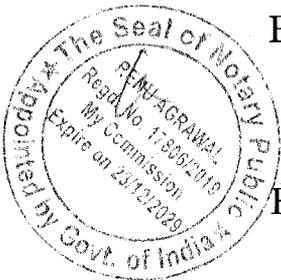


Ranu Agrawal

23. The applicant has not received any notice of caveat till today.

24. HENCE IT IS PRAYED THAT :-

- A. That Criminal Revision Application may kindly be allowed.
- B. Record and proceedings in R.C.C. No. 398 of 2002, pending before the Court of the Learned Additional Chief Judicial Magistrate, Osmanabad may kindly be called for;
- C. The impugned order dated 13.10.2025 passed below Exhibit 953 in R.C.C. No. 398 of 2002, quashed and set aside and the application Exh. 953, under Section 216 Cr.P.C. be allowed by directing alteration of the contradictory and antithetical charges under Sections 406 and 420 and;
- D. Pending Hearing and final disposal of present revision application the further proceedings in R.C.C. No. 398 of 2002, may kindly be stayed.
- E. Till then Ad-interim relief in terms of prays clause 'D' may kindly be granted.
- F. And or to grant any other relief to which present applicant is found entitled to in the facts and circumstances of the case to secure the ends of justice.



Renu Agrawal

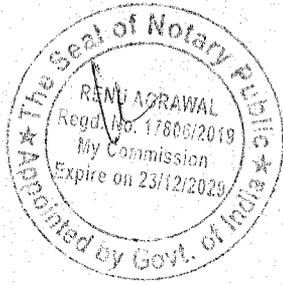
AND FOR THIS ACT OF KINDNESS THE APPLICANT, AS IN DUTY BOUND, SHALL EVER PRAY.

PLACE : AURANGABAD

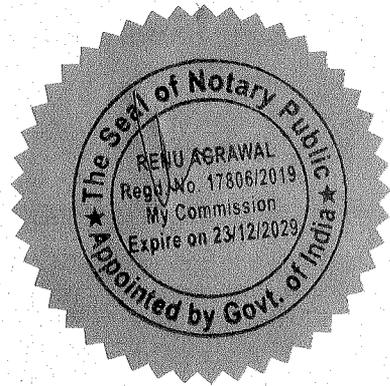
NIKHIL S. JAJU.

DATE : 15/11/2025
15 NOV 2025

ADVOCATE FOR APPLICANT.



Schry renawal



Certified That The Declarant
Shri / Smt. KM : *Sanjay Manojrao*
S/o, W/o R.o. : *Harish*
I identified by Shri / Smt. : *Harish* Has Solemnly
affirmed- before me a Deft on : *Harish* as
SI. No. *2041/25* that the contents of the affidavit
Which have been read & explained to him are true
connect to his knowledge



NOTARIAL

NOTARIAL

:: VERIFICATION ::

I, Sanjay Hariram Agarwal, Age: 60 Years, Occu.: Business, R/o 7 Hari Sava Street, Kidderpore, Kolkata-700023, presently at New Delhi, do hereby state on oath and solemn affirmation that the contents of this Revision Application from paragraph No. 1 to 22 & prayer clause A to F, are explained to me and understand English and are true and correct to the best of my knowledge and belief.

Hence, verified at Delhi on ~~15th~~ **15 NOV 2025** day of November, 2025.

Sanjay Agarwal

DEPONENT.

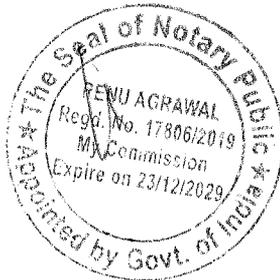
Identified by :

Adv. Kirti Jain

Kirti Jain
D/1892/2024

Advocate
I identified the deponent Who
has signed in my presence

Sanjay Hariram Agarwal



ATTESTED

**NOTARY PUBLIC
(INDIA)**

15 NOV 2025

27

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

CRIMINAL REVISION APPLICATION NO. OF 2025

DISTRICT : OSMANABAD.

Sanjay Hariram Agarwal,

.... APPLICANT

V E R S U S

The State Of Maharashtra,

Through Police Station, Osmanabad,

.... RESPONDENT

LIST OF DOCUMENTS

SR.NO.	PARTICULARS	EXH	PAGE NO.
1	Copy of the order dated 07.08.2013.	'A'	29 to 40
2	Copy of the order dated 06.05.2014	'B'	41 to 53
3	Copy of the order dated 08.05.2014	'C'	54 to 57
4	Copy of Application dated 18.08.2025	'D'	58 to 60

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SR.NO.	PARTICULARS	EXH	PAGE NO.
5	Copy of the impugned order dated 13.10.2025, passed by the learned Chief Judicial Magistrate, Osmanabad	'E'	650 78
		LAST PAGE NO.	78

PLACE : AURANGABAD

DATE : 15/11/2025.



NIKHIL S. JAJU

ADVOCATE FOR APPLICANT.

COMMON ORDER BELOW EXH. 306, 407 and 502

Application Exh. 502 is made by accused No.5 Shivaji Bhaurao More, application Exh. 407 is made by accused No.7 Sanjay Hariram Agarwal and application Exh. 306 is made by accused No.10 Sunil Chatrapal Kedar, all under section 239 Criminal Procedure Code for discharge. Perused the applications and record. Heard Ld. Adv. Shri. A.D.Gapat for accused No.5, Adv. Shri.M.S.Patil for accused No.7 and Adv. Shri.P.M.Nalegaonkar for accused No.10. Ld. Special Public Prosecutor is absent.

2. The prosecution case, in short, is that all ten accused have hatched a criminal conspiracy to cheat the Osmanabad District Central Cooperative Bank Ltd. Osmanabad (for short "O.D.C.C. Bank")for Rs. 30 crores. At the relevant time deceased accused No.1 was the Chairman of O.D.C.C.Bank and accused No.10 Sunil Kedar was the Chairman of Nagpur Dist. Central Co-op. Bank Ltd., Nagpur (for short, " the N.D.C.C.Bank"). There was a collusion between accused No.1 and 10 to purchase government securities through Home Trade Ltd. Washi, New Mumbai, unauthorized broker. Thereafter on 31/1/2002 the N.D.C.C. bank got credited their 30 crores as a deposit in the account of O.D.C.C. bank maintained with Maharashtra State Cooperative Bank Ltd. Mumbai. Then on 1/2/2002 the accused No.4, Deputy Chief Officer of O.D.C.C.Bank, at the instance of accused No.1 and 3 unauthorizedly got credited the said 30 crores in the account of said Home Trade Ltd. for purchasing government securities and on the same day Home Trade Ltd. got credited an amount of Rs. 29,99,99,766-67 ps. in the account of N.D.C.C.Bank with the Maharashtra State Cooperative Bank Ltd. Mumbai. Thus it is the case of prosecution that deceased accused No.1, Chairman of O.D.C.C.Bank and accused No.2 to 6 being main officer bearers of the said bank, without having prior permission

from the Commissioner, Cooperative Societies, accepted a deposit of Rs. 30 crores from N.D.C.C.Bank and in violation of R.B.I. directions paid sum of Rs. 29,99,34,591/- to Home Trade for government securities. Thus all accused in furtherance of their common intention have committed offences punishable under sections 120(B), 218, 406, 409, 420, 468, 471 r/w. 34 of I.P.C.

3. In his application Exh.502 the accused No.5 has contended that he has been falsely involved in this case. He was not concerned with the incident in question. He was joined as Deputy Chief Officer (Administration) of O.D.C.C. Bank from 14/2/2002 to 5/3/2002 and thereafter on 6/3/2002 to 27/3/2002. He has written the proceeding of the bank as per directions of the General Manager and except this role he did nothing. As per service rules the subordinate to follow the directions of superiors. It is also contended that in the departmental inquiry against him it was found that he has not committed any offence. Even in another inquiry conducted by three members it was revealed that this accused was not concerned with the alleged incident and therefore he again joined the bank on 8/8/2004 till his retirement on 2/12/2005. Lastly it is contended that this accused is suffering from serious disease and Angioplasty was performed on him at the hospital in Pune. According to this accused, there is no iota of evidence against him and hence he may be discharged.

4. In his application Exh.407 the accused No.7 has contended that his Home Trade Company is registered with SEBI and therefore, it cannot be said that said company could not enter into transaction in respect of government securities. Home Trade is a member of Bombay Stock Exchange, National Stock Exchange and Pune Stock Exchange. It is also contended that considering the contract notes issued in respect of government securities the dispute is of purely civil nature which can be

resolved by referring the matter to Arbitrator at Bombay as per Bombay Stock Exchange Rules. However, prosecution has given a colour of criminal nature. The dispute is within the jurisdiction of Bombay and hence it is necessary to refer it to Arbitrator and the present prosecution is unwarranted. There is no prima-facie case against this accused and he is entitled to be discharged.

5. Accused No.7 further contended that his company has honored its commitment of delivering government securities from time to time for the various purpose to whom contract notes were issued. It is also contended that merely because non routing and non reporting the transactions to the stock exchange does not invalidated the contract notes issued by the member of the company. It is further contended that the procedure and practice followed by brokers/the company in execution and completion of their market transaction should be understand. According to accused, the present prosecution cannot be continued against him and his company. The ingredients of offences in question are not proved. There was no malafide intention on the part of accused No.7. He, therefore, prayed for discharge.

6. In his application Exh. 306 the accused No.10 has contended that if the evidence produced by the prosecution is perused there is no single document showing his involvement in the case. The role played by his N.D.C.C.Bank is as a depositor only. There is no prima-faice case against him and therefore, it would be just and proper to discharge him.

7. In support of the application the accused No.5 has submitted certain documents with list Exh.507 and 510. From the said documents it appears that on 30/05/2002 he was suspended, after inquiry he was exonerated, suspension was then cancelled and he was again inducted in the service. Finally, he retired on 2/12/2005 as he completed age of 58 years.

Ld. Adv. Shri. A.D. Gapat for accused No.5 has submitted that at the time of offences in question accused No.5 was the Banking Officer and he followed the directions of his superiors otherwise there would have been misconduct on his part and therefore accused No.5 finally prepared proceeding of the meeting of Board of Directors roughly which was then verified by the Chief Officer. In his submission, merely because the proceeding of the meetings were prepared by accused No.5 no criminal act is to be attributed. It is also submitted that accused No. 5 was not knowing what was going on in O.D.C.C. Bank during the period of incident in question. Except writing proceeding of the meetings there was no role on the part of accused No.5. It is also submitted that during departmental inquiry conducted by O.D.C.C. Bank through Inquiry Officer Adv. Shri.G.R.Joshi nothing was found against No.5. It is also submitted that in the present case also there is no iota of evidence against accused No.5 and hence he deserves to be discharged. Referring some copies of medical papers of accused No.5 it is submitted that accused No.5 has undergone for Angioplasty, suffering from blood pressure etc. and therefore there is no need to ask him to go for trial as he was totally innocent.

8. Ld. Adv. for accused No.7 has submitted that looking to the prosecution case and investigation papers there is no prima-facie case against accused No.7. Ld. Adv. Shri.P.M.Nalegaonkar for accused No.10 has submitted that making deposit of Rs. 30 crores by N.D.C.C. Bank with O.D.C.C. Bank is not wrongful act nor any permission of any authority was needed for accepting the said deposit by O.D.C.C. Bank. How that amount is to be utilized by O.D.C.C. Bank is their look after. The N.D.C.C. Bank was not concerned with the transaction between the O.D.C.C. Bank and Home trade nor accused No.10 was concerned with the transaction and still he has been unnecessarily involved in the present case.

9. In support of his submissions Ld. Adv. for accused No.5 has relied on certain authorities. In Netai Dutta Vs. State of West Bengal (2005(1) B Cr C (SC) 666) the accused was charge-sheeted for the offence punishable under section 306 IPC. He had filed petition under section 482 Cr.P.C. for quashing criminal proceeding. It was found that in the suicide note of victim except referring the name of accused there was no reference of any act or incidence against accused. Except that suicide note there was no allegation by the complainant that accused was harassing the victim. The case registered against the accused was without any factual foundation. It was also found that the contents of the alleged suicide note did not in any way make out the offence against the accused. The prosecution initiated against him would only result in sheer harassment to him without any fruitful result. Therefore the Apex Court quashed the criminal proceeding.

10. In Madan Singh V/s. State of Gujarat (2010(4) B Cr C 284 (SC) the accused had filed petition under section 482 Cr.P.C. for quashing prosecution for offences under sections 306 and 107 IPC. On the facts it was observed that merely because a person had a grudge against his superior and he committed suicide on account of that grudge, even honestly feeling that he was wronged, it would not be a proper allegation for basing charge of abetment of suicide against such superior. It was also observed that unless there is specific allegation and material of definite nature, (not imaginary or inferential one), it would be hazardous to ask accused to face the trial.

11. Again, in Satish Mehra V/s. State of N.C.T. of Delhi & Anr. (2013 (1) B Cr C 480 (SC) while dealing with petition under section 482 Cr.P.C. the Apex Court has observed that the Criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may

be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused.

12. In Arun Vyas V/s. Anita Vyas [1999(2) B. Cr. C. 359 (SC)] the Apex Court observed that, section 239 has to be read along with Section 240 Cr.P.C. If the Magistrate finds that there is prima facie evidence or the material against the accused in support of the charge (allegations) he may frame charge in accordance with Section 240 Cr.P.C. But if he finds that the charge (the allegations or imputations) made against the accused do not make out a prima facie case and do not furnish basis for framing charge, it will be a case of charge being groundless, so he has no option but to discharge the accused.

13. Ld. Adv. for accused No.10 has relied on decision of Kerala High Court in Beevi Vs. Ismai (2000(3) Crimes 501) to content that at the stage of framing charge the Court has to apply its mind whether or not there is any ground for presuming commission of offence.

14. Keeping in view the above legal position the prosecution case is to be seen. In the instant case it appears from the statements of witnesses recorded by Investigating Officer and documents collected by him that in the meeting of Board of Directors of O.D.C.C.Bank held on 5/1/2002 one of the subjects discussed was acceptance of deposits from other banks. At that time the General Manager (deceased accused No.2) had pointed out that since interest on deposit of Rs. 2 Crores previously accepted at the instance

of deceased accused No.1 from N.D.C.C. Bank and another deposit accepted from Akola Bank was more they were not profitable.

15. It is to be pointed out that deceased accused No.6 by his letter dated 29/1/2002 in the capacity of General Manager of O.D.C.C. Bank had informed N.D.C.C. Bank that as per discussions held the O.D.C.C. Bank was ready to accept a deposit of 40 Crores from N.D.C.C. Bank on interest @ 10 % p.a. Next transactions which took place within 3 – 4 days are very material. O.D.C.C. Bank and N.D.C.C. Bank have their respective current account with Apex Bank i.e. Maharashtra State Co-operative Bank, Mumbai. On 31/1/2002 N.D.C.C. Bank got debited Rs. 30 crores from their current account and credited it to the current account of the O.D.C.C. Bank.

16. Prosecution witness Sahberao Manikrao Patil was Junior Officer of O.D.C.C. Bank at the relevant time. In his statement under section 161 Cr.P.C. he stated that on 30/1/2002 accused No. 3 V.D.Malvade, Chief Accountant of O.D.C.C. Bank, had asked him to prepare list of deposits with Maharashtra State Co-operative Bank Mumbai. Accordingly, he prepared that list, collected receipts, cheques etc. at the instance of accused No.3 and both of them went to Mumbai by Car. In the guest house at Kulaba of said Maharashtra State Co-operative Bank there was accused No.1. Thereupon accused No.1, 3 and said witness Sahebrao Patil immediately went to hotel Oberai, met Subodh Bhandari i.e. accused No. 8 and other persons of Home Trade. There accused No.1 discussed with them about purchase of government securities and thereafter they all came to the Maharashtra State Co-operative Bank. Sahebrao Patil then at the instance of accused No.1 made inquiry with the bank officers. On 1/2/2002 in Mumbai accused Nos. 1, 3, witness Sahberao Patil, accused No.8 and others of Home Trade found that 30 crores of N.D.C.C. Bank were credited in the account of O.D.C.C. Bank. Thereupon there was discussion between accused Nos.1 and 3 about

the purchase of government securities. Thereafter, they have contacted accused No.4 (Deputy Chief Officer of O.D.C.C. Bank) on phone and asked him to send telephone message to the Maharashtra State Co-operative Bank for transferring aforesaid 30 crores in the account of Home Trade. Accordingly accused No.4 sent message whereupon that amount went in the account of Home Trade. That time accused Nos. 8 and others of Home Trade, accused No.1 and 3 discussed about purchase of government securities. Witness Sahebrao Patil then at the instance of accused No.1 went to the office of Home Trade at Washi for collecting receipts. The value of government securities was 29,99,34,591/-. For remaining Rs. 65409/- the Home Trade issued a cheque to O.D.C.C. Bank. That cheque was then encashed and credited in the account of O.D.C.C. Bank.

17. It further appears that since the O.D.C.C. Bank did not receive RBI receipts of government securities from Home Trade the accused No.1 was insisting on Home Trade to return the amount. Accordingly, Home Trade issued a cheque of Rs. 30,89,07,975/-for returning amount to the O.D.C.C. Bank. But that cheque was dishonored. It further appears that the Home Trade never issued government securities, it only issued contract notes.

18. It further appears that on 1/2/2002 accused No.8 got credited Rs. 29,99,99,766-67 ps from the above 30 crores received to the account of N.D.C.C. Bank. According to prosecution, Home Trade has issued a false receipt to O.D.C.C. Bank, that the Home Trade is unauthorized company dealing in government securities and that accused No.7 to 9 are its directors. Rs. 30 crores received from N.D.C.C. Bank hurriedly got transferred in the account of Home Trade who, in turn, immediately transferred to N.D.C.C. Bank and according to prosecution, this is nothing but a misappropriation of huge amount of Rs. 30 crores by the Chairman and Bank Officers of O.D.C.C.

Bank and all accused have committed criminal conspiracy for misappropriation etc.

19. It further appears that the Investigating Officer has issued notice under section 102 Cr.P.C. to freeze the said 30 crores which went in the account of N.D.C.C. Bank as it is a “stolen property” within the meaning of section 410 Cr.P.C. The N.D.C.C. Bank tried to contend that amount received from Home Trade was exclusively belongs to them as it was a sale proceed of their government securities sold by Home Trade. But this contention was not accepted by the Hon'ble Bombay High Court while disposing of N.D.C.C. Bank's Criminal Writ Petition No.3/2005, disposed of on 13/3/2013 wherein Hon'ble High Court has observed that primarily, the said amount belong to O.D.C.C. Bank which has been illegally transferred to the account of N.D.C.C. Bank. Further, it does not appear that prior to investment of 30 crores through Home Trade in government securities the O.D.C.C. Bank approved it in the meeting of Board of Directors. On 08/02/2002 a meeting of Board of Directors of O.D.C.C. Bank was held only for the purpose of discussion on the audit of 1999 to 2001 conducted by NABARD Bank as per Agenda of that meeting. The prosecution witnesses have told before Investigating Officer that in the said meeting except said subject on Agenda there was no discussion on any subject. According to prosecution, though there was discussion on the said sole subject in that meeting the accused Nos. 1 to 6 have prepared a false proceeding of meeting and it was tried to show that in the said meeting the subject of deposit of Rs. 30 crores by N.D.C.C.Bank and investment of that amount in government securities through Home Trade was discussed and the said meeting has approved it. In the proceeding of that meeting it was also written that the said subject was proposed by the director Shivaji Gadhve and another director Uttamrao Tekale supported it and finally that resolution No.2 was passed. However, the said two directors have stated before I.O. that on

08/02/2002 there was only one subject discussed in the meeting, however, their names have been shown in the proceeding for approval of said investment and it is not correct. According to prosecution, one Yashwant Parshsuram Giri, District Deputy Registrar, Co-operative Societies, Osmanabad also attended said meeting dated 8/2/2002 as a Government representative. He also stated before I.O. that in the said meeting after discussion on the inspection of NABARD was over he left the meeting.

20. Further case of prosecution is that again by writing false proceeding of the Board of Directors' meeting dated 11/3/2002 of O.D.C.C. Bank it was tried to show that the directors have approved the investment of 30 crores in the government securities through Home Trade. The resolution to that effect stated to be proposed by the director Subhash More and supported by another director Rahul Mote. But these two directors have stated before I.O. that in the meetings on 8/2/2002 and 11/3/2002 there was no subject of investment through Home Trade but their names are falsely showed in the proceeding book.

21. One Nayumkhan Pathan is Junior Officer of O.D.C.C. Bank. He stated before I.O. that the proceeding of above meeting dated 8/2/2002 was written by accused No.5 who was Chief Officer of administration of O.D.C.C. Bank, that the accused No.5 got typed that proceeding from the typist Shri. Shaikh and it was kept in the meeting of 11/3/2002 and it was approved. The approved subjects then got written by accused No.5 from said Nayumkhan who then written it in the proceeding register which was then signed by deceased accused Nos. 1 and 6. This witness also stated that he has written proceeding at the instance of accused No.5 and the alleged resolution of 11/3/2002 about investment of 30 crores.

22. Thus, according to prosecution, every accused in this case has

played important role while committing offences in question. At the relevant time the accused No.10 was Chairman of N.D.C.C. Bank. As per audit report of O.D.C.C. Bank on the basis of which present complaint was filed by Divisional Joint Registrar, Co-operative Societies, Latur, there were irregularities committed by O.D.C.C. Bank as previous sanction from competent authority was not obtained, that the bank did not verify whether Home Trade was unauthorized broker or not, that the bank was not having knowledge of members of Home Trade, no correspondence or agreement were made with Home Trade, that it was not verified whether Home Trade was a firm having RBI sanction, that the directives of RBI were not followed before making investment and RBI receipts have not been obtained from the Home Trade and thus, according to Auditor, the transaction of investment is illegal.

23. Thus having regard to the prosecution case discussed herein above there appears a prima-faice case for faming charge against all accused. Accused No.7 has not produced any document in support of contentions raised in his discharge application. At this stage the questions regarding sufficiency of evidence and its reliability are not to be seen. Accused Nos. 5, 7 and 10 have not made out a case that charge is groundless. Elaborate examination of statements recorded by I.O. is not warranted. Thus there is no merit in the discharge applications of said accused and hence liable to be rejected.

24. Before parting with the order it is made clear that the above observations are made only for the purpose of deciding discharge applications and the same should not be taken to be expressions on the merits of the case. Hence following order.

12

R.C.C.No. 398/2002.
State/Pawanraje and other 9.

ORDER

Application Exh. 306, 407 and 502 stand rejected.

Sd/-7.8.2013

Date :-07/08/2013.

(C.P.Gaddam)
Chief Judicial Magistrate,
Osmanabad.

True copy



N.S.Jaju Adv

ORDER BELOW EXH.1

On 27/2/2014 this matter was adjourned to 13/3/2014 for framing of charge against accused. It was submitted that let the accused be given an opportunity of hearing under section 240 Cr.P.C. before framing of charge as, according to them, the draft of charges sought to be framed is not submitted before the Court by the prosecution for perusal. Therefore the learned A.P.P. on 13/3/2014 has submitted draft of proposed charges at Exh.583. Thus the charges sought to be framed for the offences punishable under sections 120 B, 409, 420, 406, 468 and 471 r/w. 34 I.P.C. Since accused wanted to make submissions on the said draft of charge the matter was adjourned to 15/3/2014. Accused No.7 has submitted written submissions at Exh.606. Accused No.9 has submitted written submissions at Exh. 617. Heard learned advocate for accused Nos. 5 and 9. Accused No. 9 also made oral submissions in person. Other accused did not want to make any submissions.

2. I have already narrated the prosecution case while deciding discharge applications of accused Nos. 5, 7 and 10 at Exh. 306, 407 and 502 by common order dt. 7/8/2013. At the cost of repetition the prosecution case, in short, is that all ten accused have hatched a criminal conspiracy to cheat the Osmanabad District Central Cooperative Bank Ltd., Osmanabad (for short "O.D.C.C. Bank")for Rs. 30 crores. At the relevant time deceased accused No.1 was the Chairman of O.D.C.C.Bank while accused No.10 Sunil Kedar was the Chairman of the Nagpur District Central Co-operative Bank Ltd., Nagpur (for short, "the N.D.C.C.Bank"). There was a collusion between

accused No.1 and 10 to purchase government securities through Home Trade Ltd. Washi, New Mumbai, unauthorized broker. Thereupon deceased accused No. 6, Dy. General Manager of O.D.C.C.Bank, demanded a deposit of Rs. 40 crores from N.D.C.C.Bank. Thereafter on 31/1/2002 the N.D.C.C. bank got credited their 30 crores as a deposit in the account of O.D.C.C. bank maintained with Maharashtra State Cooperative Bank Ltd. Mumbai. Then on 1/2/2002 the accused No.4, Deputy Chief Officer of O.D.C.C.Bank, at the instance of accused No.1 and 3 unauthorizedly got credited the said 30 crores in the account of said Home Trade Ltd. for purchasing government securities. Accused No.8, Vice Chairman of Home Trade, then issued false Contract Notes of government securities worth Rs. 29,99,34,591/- to accused No.3 and on the same day the Home Trade Ltd. got credited an amount of Rs. 29,99,99,766-67 ps. in the account of N.D.C.C.Bank with the Maharashtra State Cooperative Bank Ltd. Mumbai. The Home Trade Ltd. also issued a false receipt of Rs. 29,99,34,591/- for purchasing government securities and delivered to accused No.3. On the same day i.e. 1/2/2002 accused No. 8 got transferred Rs. 29,99,99,766=67 in the account of N.D.C.C. Bank towards alleged sale proceeds of Government Securities. It is further alleged that in the meeting dated 8/2/2002 of the Board of Directors of O.D.C.C.Bank there was no discussion on the purchase of government securities from Home Trade and even then on the proceeding register wrong entry is made to the effect that there was a resolution for purchasing government securities and the Board of Directors have unanimously resolved to purchase government securities and that proceeding was signed by accused No.1, 2 and 6. Thus it is the case of prosecution that deceased accused No.1, Chairman of O.D.C.C.Bank and accused No.2 to 6 being main officer

bearers of the said bank, without having prior permission from the Commissioner, Cooperative Societies, accepted a deposit of Rs. 30 crores from N.D.C.C.Bank and in violation of R.B.I. directions paid sum of Rs. 29,99,34,591/- to Home Trade for government securities. Thus all accused in furtherance of their common intention have committed offences punishable under sections 120(B), 218, 406, 409, 420, 468, 471 r/w. 34 of I.P.C.

3. In his written submissions Exh. 606 the accused No.7 has prayed for discharge. The sum and substance of his written submissions is as under -

The Home Trade Ltd. had issued Contract Notes in respect of Government Securities in favour of O.D.C.C. Bank in its capacity as a member of the National Stock Exchange for the transactions undertaken by Home Trade on "Principal to Principal" basis as Home Trade was seller of the securities and it had not charged any brokerage to the O.D.C.C.Bank. Thus, Home Trade had not acted as a Broker. The said Notes were issued in accordance with rules of Stock Exchange. Home Trade had agreed to sell securities to the O.D.C.C.Bank from its proprietary account. Therefore the amount paid by the O.D.C.C.Bank was not received or obtained by Home Trade in a fiduciary capacity as a trustee of the said bank. After the said Contract Notes were executed by Home Trade in favour of O.D.C.C.Bank, Home Trade was under an obligation to deliver the securities which were purchased by the O.D.C.C.Bank under the said Contract Notes. Thus, after receipt of amount from the O.D.C.C. bank the Home Trade became owner of that money and was free to utilize that money. The relationship between O.D.C.C.Bank and Home Trade was that of 'Creditor' and 'Debtor'. On

account of said relationship a civil liability only arises. The criminal liability arises if the beneficial ownership in the property is not transferred to the accused and he is placed under an obligation to utilize the money for the purpose for which it was handed over to him. Such is not the case and therefore section 406 I.P.C. cannot be invoked as main ingredients required to attract section 406 I.P.C. are missing. As far as offence of cheating is concerned there is no allegation that accused No.7 caused any deception. On the contrary from the complaint and statements of prosecution witnesses it is very clear that the accused had not made any representation much less the false representation. The charge cannot be framed under sections 406 and 420 I.P.C. at the same time and therefore accused No.7 cannot be tried for both offences of cheating and criminal breach of trust. Even charge under section 468 I.P.C. cannot be framed as it is to be firstly established that forged documents were prepared before alleged offence of cheating has taken place. Section 34 does not attract as it is to be firstly established that crime has been committed by several persons. Secondly, there was a common intention and a pre-arranged plan to commit an offence and thirdly there was a participation in the commission of the offence. The leading features of Section 34 IPC i.e. the element of participation in action and common intention are missing. With this it is prayed that accused No. 7 be discharged.

4. In his written submissions at Exh. 617 the accused No. 9 has reproduced the submissions of accused No.7 in Exh. 606. In addition to that he made certain submissions which can be briefly narrated as under.

When accused No. 9 had joined the company – Home Trade he

was a mere employee on a monthly salary and posted in the Legal and Secretarial Department. He was appointed as a Company Secretary vide appointment letter dt. 16/11/1994. The role of Secretary was as defined in the Articles of Association of the Company. Accused No. 9 was subsequently appointed as an “Additional Director” on 19/1/2000 and he was designated as an “Executive Director and Company Secretary”. He then resigned from the Home Trade vide resignation letter dt. 25/4/2002. During his service he was not entrusted with responsibility of the “Whole Sale Debt Market” Department which used to deal in the Government Securities business. There is no averment also in the F.I.R. or in the statements of the witnesses that the accused No.9 was responsible for the company's dealing in Government Securities. Accused No.7 was C.E.O. and Chairman of Home Trade to whom H.O.D. of Whole Sale Debt Market was directly reporting. There is nothing on record to show that accused No.9 being a Director of the company had participated in any meeting where any discussion or decision relating to the transactions involved in the present case took place. Prosecution has not attributed any role to accused No.9. He was in no way connected to alleged conspiracy.

Accused No. 9 has further contended that there is nothing to show that he was ever entrusted /or dominion over any property of the O.D.C.C.Bank much less dishonestly converted to his own use. Accused No.9 had signed one cheque dt. 1/2/2002 for Rs. 65,409=73 issued in favour of O.D.C.C. Bank and besides this solitary act of signing cheque he did nothing and there is absolutely no evidence and material to show his involvement in the offences in question.

Accused No. 9 has further contended that in the F.I.R. there is no allegation that he had caused any deception. In fact he had not made

any representation much less false representation nor he ever visited the O.D.C.C. Bank or present in any meeting. All correspondence/documents exchanged by and between Home Trade and O.D.C.C.Bank were signed by other accused. Thus, O.D.C.C.Bank had not interacted at all with the accused No. 9 at any point of time. There is no evidence or material to proceed against him under section 420 or 406 r/w. 34 I.P.C. In the charge-sheet there is not a single ingredient to attract offences punishable under sections 465 and 471 I.P.C. The Investigating Officer and prosecution have misread the Contract Notes issued by Home Trade as a member of Stock Exchange and hence section 465 I.P.C. does not attract. According to statement of Sahebrao Manikrao recorded by I.O. it is clear that it was accused No.8 alone who gave the said Contract Notes to him and hence section 471 r/w. 34 I.P.C. cannot be invoked against accused No.9. The alleged offences of cheating and criminal breach of trust/misappropriation were committed by other accused during bank hours in the Maharashtra State Cooperative Bank, Fort Branch and hence accused cannot be charged for the alleged offences . In the charge-sheet there is not a single ingredient to attract the offence punishable under section 120-B I.P.C..

Thus, accused No.9 was neither a “Managing Director” nor a “Promoter” or “Promoter Director” of Home Trade. He was a paid Employee working in the Legal & Secretarial Department and he had nothing to do with account, day to day finance and Wholesale Debt Market Departments which used to deal in Government Securities. He had never visited Osmanabad and/or the O.D.C.C. Bank. He had never interacted with anybody in the O.D.C.C.Bank. He has not obtained any personal financial gain out of the said transactions. The element

of mens rea is completely absent. Thus, there is nothing on record to charge the accused for the alleged offenses. With this it is prayed that he be discharged.

5. I have also gone through the documents with list Exh. 618 placed by accused No.9. In his oral submission the accused No.9 has submitted that during his tenure not a single Contract Note was signed by him. He then pointed out certain investigation papers in support of his contentions in his written submissions. It is also submitted that Government Securities are regulated by RBI who is thus Regulating Authority. It is then submitted that copies of meetings of Home Trade are not forthcoming. His isolated act of signing cheque is sufficient not to frame charge. Ld. Adv. for accused No.9 has also pointed out certain investigation papers and submitted that there is no sufficient material to frame charge against accused No.9.

6. The Ld. Special Public Prosecutor Shri.B.N.Karanjkar has submitted that as per written submissions of accused No.9 himself accused No.9 was appointed as a "Additional Director" and he worked as "Executive Director and Company Secretary" at the relevant time and therefore it could not be said that his role was to sign cheque only. In the submission Ld. Spl. P.P. there is sufficient material to show the involvement of accused No.9. Accused No.7 was the Chairman and there is strong material to show his involvement. Thus, at this stage there is sufficient material to frame charge as per draft of charges.

7. In the instant case the prosecution comes out with a specific case that in the meeting of Board of Directors of O.D.C.C.Bank held on 5/1/2002 the General Manager (deceased accused No.2) had pointed

out that since interest on deposit of Rs. 2 Crores previously accepted at the instance of deceased accused No.1 from N.D.C.C. Bank and another deposit accepted from Akola Bank was more, they were not profitable. Despite this deceased accused No.6 by his letter dated 29/1/2002 in the capacity of General Manager of O.D.C.C. Bank had informed N.D.C.C. Bank that as per discussions held the O.D.C.C. Bank was ready to accept a deposit of 40 Crores from N.D.C.C. Bank on interest @ 10 % per annum. Next transactions which took place within 3 – 4 days are crucial. The O.D.C.C. Bank and N.D.C.C. Bank have their respective current account with Apex Bank i.e. Maharashtra State Co-operative Bank, Mumbai. On 31/1/2002 N.D.C.C. Bank got debited Rs. 30 crores from their current account and credited it to the current account of the O.D.C.C. Bank. It was at the instance of accused No.10, the then Chairman of N.D.C.C. Bank. On the next day i.e. on 1/2/2002 the Chairman and other office bearers of O.D.C.C. Bank (Deceased accused Nos. 1, 2 and 3) and present accused Nos. 3 to 5 got credited said 30 crores to the account of Home Trade. Prosecution's further case is that on 1/2/2002 accused No.8 got credited Rs. 29,99,99,766-67 ps from the above 30 crores to the account of N.D.C.C. Bank. According to prosecution, Home Trade has issued a false receipt to O.D.C.C. Bank, that the Home Trade is unauthorized company dealing in government securities and that accused No.7 to 9 are its directors. Rs. 30 crores received from N.D.C.C. Bank hurriedly got transferred in the account of Home Trade who, in turn, immediately transferred to N.D.C.C. Bank and according to prosecution, this is nothing but a misappropriation of huge amount of Rs. 30 crores by the Chairman and Bank Officers of O.D.C.C. Bank and all accused have committed criminal conspiracy for misappropriation

etc. and ultimately cheated the O.D.C.C.Bank.

8. Looking to the above prosecution case the points raised by the accused Nos. 7 and 9 are to be seen. As per contentions of accused No. 9 he was initially posted in the Legal and Secretarial Department and later on appointed as a Additional Director on 19/1/2000 and designated as Executive Director and Company Secretary vide letter dt. 1/4/2000. He stated to be resigned from the company on 25/4/2002 i.e. after the offences in question. According to prosecuting story narrated in the charge-sheet the entire episode was nothing but a well planned camouflage to cheat the O.D.C.C. Bank.

9. According to prosecution, O.D.C.C. Bank never received RBI receipts of Government Securities from Home Trade and therefore deceased accused No.1 was insisting on Home Trade to return the amount of 30 crores . Accordingly, Home Trade issued a cheque of Rs. 30,89,07,975/- for returning amount to the O.D.C.C Bank but that cheque was bounced. Home Trade merely issued Contract Notes and not Government Securities.

10. I have already considered gravamen of the charge while deciding discharge applications Exh. 306, 407 and 502. The discharge application Exh. 407 of accused No.7 has already been rejected by common order dt. 7/8/2013. The points raised by accused Nos. 7 and 9 in the written submissions and at the time of oral submission are to be considered at the trial as they are touching the merits of the case and hence those can be considered after recording of evidence. The question regarding sufficiency of evidence and its reliability are not to be seen at this stage of framing of charge. Elaborate examination of

statements recorded by I.O. is not warranted at this stage. Thus, looking to the prosecution case and investigation papers I am of the opinion that charge need to be framed for the alleged offences.

11. Accused No.9 has relied on decision in P.N. Sehgal Vs. Amar Nath (Punjab Law Reporter, VOL. LXXXII- 1980, Page 39) to contend that an offence under section 406 I.P.C. is in a way anti-thesis of the offence under section 420 I.P.C. as in case of criminal misappropriation the property is voluntarily kept in the custody of accused while in the case of cheating the accused by adopting deceitful means induces the complainant to part with property.

12. Accused No.9 then relied on decision in State Vs. Tirath Das (A.I.R.1954 ALL.583). It appears from this decision that section 405 I.P.C. based on the idea that the property entrusted or in respect of which dominion is passed over the accused is doesn't becomes his property so that he can used it for his own purpose. Where a relationship of debtor and creditor created between the parties the beneficial ownership in the money passes and hence person receiving property can use it for his own purpose.

13. Last ruling relied on by accused No. 9 is the decision of Hon'ble Gujrat High Court in Girasia Lakhubha Pathubha V/s. State of Gujrat (1966 Cri.L.J. 727). In that case the complainant, accused Nos. 1 and 2 being relatives were owners of lands jointly. For a loan the lands were mortgaged by mortgage-deed. It was properly executed by accused Nos. 1 and 2. But one third person signed it for the company. After document has registered the complainant gave application to the

bank that his signature had been forged. The said third person was not prosecuted but the accused were convicted under relevant sections read with section 34 I.P.C. It was held that a mere forgery as such was not a criminal act which could be done by several person and hence it was not a case for applying section 34. S. 34 applies when a criminal act committed by several persons. There can be criminal act which cannot be committed by several persons. If in such a case the criminal act is done by several persons, it amounts to a repetition of the criminal act.

14. However, we are at the stage of framing of charge against the accused. Having gone carefully through the charge-sheet and the investigation papers the prosecution case of scam of 30 crores is based on peculiar facts and circumstances alleged, because not only Chairman and Bank Officers of the O.D.C.C. Bank but also outsiders alleged to have cheated the bank by entering into criminal conspiracy, misappropriation of money, fabrication of documents for the purpose of cheating etc. Therefore, at this stage this Court felt doubt as to which of the several acts (which may be proved) will constitute the offence on account of the nature of the acts or series of acts alleged against the accused. I therefore of the opinion that Section 221 Cr.P.C. attracts. It reads as under -

Where it is doubtful what offence has been committed -

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once ; or he may be charged in the alternative with

having committed some one of the said offences.

(2) If, in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be), though he was not charged with such offence.”

The above illustrations below S. 221 Cr.P.C. amply clarifies the position. In Sunil Kumar Paul Vs. State of West Bengal (AIR 1965 SC 706) it was observed that all possible offences which can be made out on the basis of allegation made by prosecution in the complaint, or in the charges submitted by the investigation agency, can be charged.

15. Thus, let there be charges as per draft of proposed charge at Exh.

583 wherein charges under different heads are shown. Section 465 I.P.C. should be deleted from charge Nos. 6 and 8. The charge at Sr. No.3 for offence under section 420 should be modified as it should be charge against all accused inasmuch as the ultimate sufferer stated to be O.D.C.C.Bank.

16. Hence case is now adjourned for framing of charge as today accused Nos. 7 to 10 are absent. The matter is adjourned to 8/5/2014 for framing of charge as accused No.7 is from Calcutta, accused Nos. 8 and 9 are from Mumbai and accused No.10 is from Nagpur. Parties are aware of the fact that Hon'ble Supreme Court had directed previously to dispose of this matter by the end of October, 2013. The Hon'ble Supreme Court has now extended the time till 31/10/2014 for disposal of this case vide order dt. 28/3/2014 copy whereof is at Exh.635 communicated by letter Exh.634. Hence all accused shall remain present for framing of charge on 8/5/2014 without fail.

sd/-

Date :- 6/5/2014.

(C.P.Gaddam)
Chief Judicial Magistrate,
Osmanabad.

True copy



N.S.Jaju Adv

In view of order dt. 6/5/2014 below Exh. 1 the following charge is framed,

CHARGE

1. C.P.Gaddam. Chief Judicial Magistrate, Osmanabad hereby charge you accused .

3. Vinayak Digambar Malvade.
Age 67 years, Occu. Retired.
R/o. Saraswati Niwas, Patel Chowk, Teli Galli, Latur.
4. Harischandra Kashinath Tambe.
Age 63 years, Occu. Service.
R/o. Veer Sawarkar Chowk, Shalu Galli, Bhoom, Tq.
Bhoom, Dist. Osmanabad.
5. Shivaji Bhaurao More.
Age 67 years, Occu. Service.
R/o. At Post Talmud, Tq. Omerga, Dist. Osmanabad.
At present resident of B/22, "Swapnakunj", Rajiv Gandhi
Nagar, Osmanabad.
7. Sanjay Hauram Agarwal.
Age 48 years, Occu. Business.
R/o. 7 Harisabha Street, Khedarpur, Calcutta-23.
8. Subodh Chand Dayal Bhandari.
Age 48 years, Occu. Chartered Accountant.
R/o. Flat No.402, Aprodite Co-op- Society, Devnar village
road, Chembur, Mumbai 400 088. (within Govandi Police
Station).
9. Nandkishor Shankarlal Trivedi.
Age 46 years, Occu. Advocate.
R/o. 3-A, Pushpam, 6 Khandubhai Desai Road, Vile Parle,
(West), Mumbai, 56. (within Juhu Police Station)

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10. Sunil Chharrapal Kedar.
Age 53 years, Occu. Service.
R/o. Nagpur.

as follows -

1. That you accused above named along with deceased accused No.1 Bhupalsing @ Pawan Santajirao Rajenimbalkar, Chairman, Osmanabad District Central Co-operative Bank Ltd. Osmanabad, deceased accused No.2 Arun Jivanrao Deshpande and deceased accused No.6 Babu Nivrutti Thorat, Main Officers of said Bank, on or about 29/1/2002 at Osmanabad and Mumbai had agreed to do or cause to be done an illegal acts, namely, criminal breach of trust, making false documents, using them as genuine documents and ultimately to cheat the said O.D.C.C.Bank for Rs. 30 crores and besides the above agreement, did acts i.e. committed criminal breach of trust, cheated said Bank in pursuance of such agreement etc. and thereby committed offence punishable u/s. 120B of Indian Penal Code and within my cognizance.
2. That you accused Nos. 3 to 5 and deceased accused Nos. 1, 2 and 6 on or about 1/2/2002 at Osmanabad, being officers of O.D.C.C.Bank and in the way of business as bankers, were having dominion over Rs. 30 crores received from Nagpur District Central Co-operative Bank Ltd., Nagpur as a deposit, in furtherance of common intention of you accused Nos. 1 to 6, committed criminal breach of trust in respect of said 30 crores and thereby committed offence punishable under section 409 r/w. 34 I.P.C. and within my cognizance.
3. That you accused Nos. 7 to 9 being Directors or office bearers of Home Trade Ltd. Washi, New Mumbai, a company unauthorizedly dealing with Government Securities, on or about 1/2 2002 at Mumbai, being entrusted with 30 crores by Osmanabad District Central Co operative Bank Ltd. Osmanabad for purchasing Government Securities, in furtherance of your common intention and in furtherance of common intention with accused No.10.

committed criminal breach of trust in respect of said Rs. 30 crores and thereby committed an offence punishable under section 406 r/w. 34 IPC and within my cognizance.

4. That you accused Nos. 7 to 9 during the period from February to May 2002 at Mumbai, in furtherance of your common intention, forged certain documents, viz. contract notes in respect of Government Securities, namely, Bihar SDL 2110, Sikkim 2090, Nagaland 2007, M.P. SDL 2007 and M.P. SDL, total worth Rs. 29,99,34,591/- intending that they shall be used for the purpose of cheating Osmanabad District Central Co-operative Bank Ltd. Osmanabad and thereby committed an offence punishable under section 468 r/w. 34 IPC and within my cognizance.

5. That you accused Nos. 7 to 9 during the period from February to May 2002 at Osmanabad and Mumbai, in furtherance of your common intention, fraudulently and/or dishonestly used as genuine the aforesaid contract notes which you knew or had reason to believe, at the time when you used it, to be forged documents and thereby committed an offence punishable under section 471 r/w. 34 IPC and within my cognizance.

6. That you accused Nos. 3 to 5 and deceased accused Nos. 1, 2 and 6 after two meetings of Board of Directors of Osmanabad District Central Co-operative Bank Ltd. Osmanabad held on 8/2/2002 and 11/3/2002 respectively at Osmanabad, in furtherance of your common intention, forged certain documents, viz. Proceeding Register of said meetings showing discussion and passing of resolution on the subject of purchase of Government Securities through Home Trade and approval to that purchase when, in fact, no such discussion was held nor passed any such resolution, and said forged documents was with an intention that they shall be used for the purpose of cheating and thereby committed an offence punishable under section 468 r/w. 34 IPC and

within my cognizance.

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7. That you accused Nos. 3 to 5 and deceased accused Nos. 1, 2 and 6 after above meetings dated 8/2/2002 and 11/3/2002 at Osmanabad, in furtherance of your common intention, fraudulently and/or dishonestly used as genuine the aforesaid Proceeding Register of said two meetings which you knew or had reason to believe, at the time when you used it, to be forged document and thereby committed an offence punishable under section 471 r/w. 34 IPC and within my cognizance.

8. That you accused Nos. 3 to 5 and 7 to 10 on or about 1/2/2002 along with deceased accused Nos. 1, 2 and 6 at Osmanabad and/or Mumbai, in furtherance of common intention of you all accused including deceased accused, defrauded and cheated Osmanabad District Central Co-operative Bank Ltd. Osmanabad, by fraudulently and/or dishonestly inducing the said bank to deliver 30 crores belonging to that bank and thereby committed an offence punishable under section 420 r/w. 34 IPC and within my cognizance.

And I hereby direct that you be tried by this court on the said charge.

Date:- 8/5/2014.

(C.P.Gaddam),
Chief Judicial Magistrate,
Osmanabad.

True copy



N.S.Jaju Adv

IN THE COURT OF HON'BLE CHIEF JUDICIAL MAGISTRATE,
OSMANABAD.

CRIMINAL APPLN. NO. OF 2025

In Reg. Cr. Case. No. 398/ 2002

APPLICANT: Sanjay Hariram Agarwal,
aged about 60 years, r/o 7 Hari Sava Street
Kidderpore, Kolkata – 700023.

-V/s-

NON-APPLICANT: State of Maharashtra.
Through P.S.O. of P.S Osmanabad
District: Wardha

APPLICATION U/S 216 OF THE CRIMINAL PROCEDURE CODE 1973 /
U/S 239 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023.

The applicant most humbly and respectfully submits as under;

1. The present application arises in a background where the trial from its very inception, has suffered from legal infirmities so fundamental that continuing the trial without rectification would amount to perpetuating a miscarriage of justice. The charges as framed are legally incompatible and the very nature of the dispute is civil and not criminal, and the accused could not properly point out these defects before the charges were framed.
2. That the Hon'ble Supreme Court, in a recent and strong disapproval of judicial approach towards criminal cases arising from commercial disputes, observed in M/s Shikhar Chemicals v. State of U.P., SLP (Crl.) No. 11445/2025, order dated 04.08.2025 [Annexure-A]:

“The Magistrate unfortunately remained unmindful of the fact that even as per the complainant’s own say the case is one of sale of goods and recovery of some balance amount... It was expected of the Additional CJM to know that in a case of sale transaction where is the question of any entrustment of goods so as to bring the case within the

ambit of criminal breach of trust punishable under Section 406 of the IPC. ... We are not taken by surprise with the Magistrate exhibiting complete ignorance of law... However, we expected at least the High Court to understand the fine distinction between the two offences... It was expected of the High Court to know the well-settled position of law that in cases of civil dispute a complainant cannot be permitted to resort to criminal proceedings as the same would amount to abuse of process of law.”

3. That the present criminal proceedings arise out of a set of commercial transactions between Osmanabad District Central Co-operative Bank Ltd. (hereinafter “Osmanabad Bank”), Nagpur District Central Co-operative Bank (hereinafter “Nagpur Bank”) and M/s Home Trade Ltd. (hereinafter “HTL”), pertaining to purchase and sale of Government Securities during the year 2001–2002.
4. That the prosecution case, in brief sans of necessary details, is that the Osmanabad Bank paid money to purchase Government securities worth rupees 30 crores from HTL. That a contract note was issued on 01.02.2002. It is alleged that as HTL failed to honour the transaction, although the time for providing Government securities was still available, HTL was made to issue a cheque to the Osmanabad Bank for returning the money it received, but these cheques got dishonoured. This led to the lodging of FIR on 05.05.2002 and the charges have been framed against the applicant under Sections 406, 420, 468, 471 read with Section 120B and Section 34 of the Indian Penal Code, 1860 through an order dated 08.05.2014 [**Annexure-B**].
5. That the Applicant herein was, at the relevant time, one of the directors of HTL. The gravamen of the allegations is limited to the said transactions which are commercial in nature and do not prima facie attract any criminal charges.
6. **That the charges framed on 08.05.2014 under Sections 406 and 420 IPC are legally antithetical and cannot co-exist, thereby violating the most basic principles of criminal jurisprudence and causing irreparable prejudice to the Applicant from the very inception of the trial and has led to complete failure of justice.**
7. That Section 420 IPC requires proof of dishonest intention at the inception of the transaction, i.e., when inducing the delivery of property through deceit. Conversely, Section 406 IPC applies when property is lawfully entrusted to the accused, who subsequently develops a dishonest intention and misappropriates it. These two

offences cannot arise from the same act or transaction as they are antithetical to each other.

8. That the Hon'ble Supreme Court has repeatedly and emphatically cautioned against such casual and legally untenable approach by courts. Recently, in *M/s Shikhar Chemicals v. State of U.P., SLP (Crl.) No. 11445/2025, order dated 04.08.2025, [Annexure-A]* the Court observed with concern:

“This very Bench in a very recent pronouncement in the case of “Delhi Race Club (1940) Ltd. and Others v. State of U.P. and Another”, reported in (2024) 10 SCC 690 has exhaustively explained what constitutes criminal breach of trust. However, it appears that the judgment was not looked into so as to understand what constitutes criminal breach of trust punishable under Section 406 of the IPC.”

9. In the said **Delhi Race Club Ltd. v. State of U.P. [(2024) 10 SCC 690]** [Annexure-C], the Supreme Court explicitly clarified this distinction, holding: *“For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient... Both the offences cannot co-exist simultaneously.”* The Court further observed that

*“Before we close this matter, we would like to say something as regards the casual approach of the courts below in cases like the one at hand. The Indian Penal Code (IPC) was the official Criminal Code in the Republic of India inherited from the British India after independence. The IPC came into force in the sub-continent during the British rule in 1862. The IPC remained in force for almost a period of 162 years until it was repealed and replaced by the Bharatiya Nyaya Sanhita (“BNS”) in December 2023 which came into effect on 1st July 2024. **It is indeed very sad to note that even after these many years, the courts have not been able to understand the fine distinction between criminal breach of trust and cheating.***

When dealing with a private complaint, the law enjoins upon the magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The magistrate must carefully apply its mind to ascertain whether the

allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from a FIR, this responsibility is of the police – to thoroughly ascertain whether the allegations levelled by the informant indeed falls under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for the police officers to routinely and mechanically proceed to register an FIR for both the offences i.e. criminal breach of trust and cheating on a mere allegation of some dishonesty or fraud, without any proper application of mind.

It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating viz-a-viz criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC (now BNS, 2023) are not twins that they cannot survive without each other.”

10. Despite this well-settled legal position existing even before the *Delhi Race Club judgment and more emphatically laid down with utmost clarity now*, the court framed charges under both Section 406 and 420 IPC and other sections as co-existing. *The framing of such antithetical charges violates the principles of criminal jurisprudence and undermines the accused’s ability to prepare a coherent defence, thereby infringing upon the right to a fair trial guaranteed under Articles 14 and 21 of the Constitution.* The concurrent framing of these incompatible charges, constitutes a cumulative miscarriage and failure of justice, warranting the present application.
11. **Even otherwise, the present dispute is civil in nature and has been given a criminal colour, amounting to an abuse of process of law.** It is a matter of record that cheque bouncing cases filed against HTL and accused were also dismissed
12. That a perusal of the prosecution’s case, including the FIR, charge-sheet and the witness depositions, demonstrates that the underlying transactions were commercial in nature involving purchase and sale of Government Securities and issuance of cheques for amounts allegedly due.

13. The allegations, even if taken at their highest, at best make out a claim for recovery of money, which is enforceable through civil remedies and not through prosecution under the penal code.
14. That the Hon'ble Supreme Court has repeatedly cautioned that criminal law should not be used to settle scores in commercial disputes. Recently in *M/s Shikhar Chemicals v. State of U.P., SLP (Crl.) No. 11445/2025 [Annexure-A]*, order dated 04.08.2025, **the Court strongly deprecated the practice of allowing prosecution of civil disputes under the guise of criminal charges.** In this case, the complainant, a yarn trader, alleged that the accused's firm purchased yarn worth ₹52.34 lakhs, paid ₹47.75 lakhs, and failed to pay the balance of ₹4.59 lakhs. The complainant, instead of filing a civil recovery suit, lodged a private criminal complaint. The Magistrate, after inquiry under Section 202 Cr.P.C., took cognizance only under Section 406 IPC. The accused's petition under Section 482 Cr.P.C. for quashing was rejected by the Allahabad High Court. The Hon'ble Supreme Court came down strongly on the High Court and the trial court for allowing a civil dispute to be prosecuted criminally. The Bench observed that:

“The Magistrate unfortunately remained unmindful of the fact that even as per the complainant's own say the case is one of sale of goods and recovery of some balance amount. It was expected of the Additional CJM to know that in a case of sale transaction where is the question of any entrustment of goods so as to bring the case within the ambit of criminal breach of trust punishable under Section 406 of the IPC. This position of law came to be explained by this Court almost six decades back in the landmark decision titled “State of Gujarat vs. Jaswantlal Nathal” reported in 1968 (2) SCR 408, wherein this Court stated that a mere transaction of sale cannot amount to an entrustment.” ...

“We are not taken by surprise with the Magistrate exhibiting complete ignorance of law as regards the position of law, as to what constitutes cheating punishable under Section 420 of the IPC and criminal breach of trust punishable under Section 406 of the IPC. However, we expected at least the High Court to understand the fine distinction between the two offences and the necessary ingredients to constitute the offence of cheating and criminal breach of trust. This very Bench

in a very recent pronouncement in the case of “Delhi Race Club (1940) Ltd. and Others v. State of U.P. and Another”, reported in (2024) 10 SCC 690 has exhaustively explained what constitutes criminal breach of trust. However, it appears that the judgment was not looked into so as to understand what constitutes criminal breach of trust punishable under Section 406 of the IPC.” ...

“It was expected of the High Court to know the well-settled position of law that in cases of civil dispute a complainant cannot be permitted to resort to criminal proceedings as the same would amount to abuse of process of law. It was expected of the High Court to understand the nature of the allegations levelled in the complaint. In substance the High Court has said in so many words that the criminal proceedings instituted by the complainant in a case of pure civil dispute is justified because it may take considerable time for the complainant to recover the balance amount by preferring a civil suit. In such circumstances referred to above we are left with no other option but to set aside the order of the High Court even without issuing notice to the respondents.”

15. That in the present case, continuing the trial on the basis of allegations which, on their own showing, arise from a commercial dispute amounts to permitting the abuse of criminal process, contrary to the law laid down by the Hon'ble Supreme Court, and causes irreparable prejudice to the Applicant.
16. That this case is the very kind that the Hon'ble Supreme Court has repeatedly warned against, the casual framing of mutually exclusive charges, and the criminalization of purely civil disputes. Each of these infirmities, individually grave, have compounded towards serious and irreparable prejudice to the Applicant and has led to failure of justice.
17. That continuing with the present charges would perpetuate the abuse of criminal process and cause further irreparable prejudice to the Applicant. The matter requires immediate correction to prevent further miscarriage of justice.
18. The applicant craves leave to add, amend or modify the submissions including submission of additional documents if required.

PRAYER

In view of the above, it is most respectfully prayed that this Hon'ble Court may be pleased to

- a) Drop/alter the antithetical and unsustainable charges framed both under Sections 406 and 420 IPC; and
- b) Direct that the trial may recommence only after amending the charges in accordance with law, keeping in view the binding precedents of the Hon'ble Supreme Court prohibiting the simultaneous framing of such mutually exclusive charges and the settled principle that purely civil disputes cannot be given a criminal colour; and

Pass such other and further orders as this Hon'ble Court may deem fit and proper in the interests of justice.

Dated this 14th day of August, 2025.

For the advocates for the Applicant

For the Applicant

SOLEMN AFFIRMATION

I **SANJAY HARIRAM AGARWAL**, aged about 60 years, Occupation: BUSINESS, residing at 7 Hari Sava Street, Kidderpore, Kolkata – 700023., above named Applicant do hereby state on solemn affirmation that the contents of above paras of affidavit are true and correct to my personal knowledge and belief and have been drafted by my counsel on my instruction and have been explained to me in vernacular and have been found to be true and correct. Hence verified and signed on this **14th Day of AUGUST, 2025** at Delhi.

DEPONENT

I know and identify the deponent

(ADVOCATE)

True copy



N.S.Jaju Adv

R.C.C. No. 398/2002
CNRNO.MHOS030003962002

ORDER BELOW EXH. 953

1. Accused No.7 Sanjay Hariram Agarwal has filed present application under Sec. 216 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.) / under Sec. 239 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short BNSS) for alteration of charges.

2. It is contended that the present criminal proceeding arises out of set of commercial transactions between Osmanabad District Central Co-Operative Bank Ltd. (for short ODCC Bank), Nagpur District Central Co-Operative bank Ltd. (for short NDCC Bank) and Ms. Home Trade Ltd., (for short HTL) pertaining to purchase and sale of Government Securities during the year 2001-2002. As per the prosecution case the ODCC Bank paid money to purchase Government securities worth Rs. 30 crore from HTL. A contract note was issued on 01.02.2002. It is alleged that the HTL failed to honour the transaction, although the time for providing Government securities was still available. HTL was made to issue a cheque to the ODCC Bank for returning the money it received but these cheques got dishonored. This led to the lodging of FIR on 05.05.2002 and thereafter the charges have been framed against the accused under Secs. 406,420,468,471 r/w Sec. 120B and under Sec. 34 of the Indian Penal Code, 1860 (for short IPC) through an order dt. 08.05.2014. It is further contended that at the relevant time, accused was one of the directors of HTL. The gravamen of the

allegations is limited to the above said transactions which are commercial in nature and do not prima facie attract any criminal charges.

3. It is further contended that the charges framed on 08.05.2014 under Sections 406 and 420 of IPC are legally antithetical and cannot co-exist, thereby violating the most basic principles of criminal jurisprudence and causing irreparable prejudice to the accused from the very inception of the trial and has led to complete failure of justice. It is further contended that Sec. 420 of IPC requires proof of dishonest intention at the inception of the transaction, i.e. when inducing the delivery of property through deceit. Conversely Sec. 406 of IPC applies when property is lawfully entrusted to the accused, who subsequently develops a dishonest intention and misappropriates it. These two offences cannot arise from the same act or transaction as they are antithetical to each other. It is further contended that despite well settled legal position, the court has framed charges under both the Sections 406 and 420 of IPC simultaneously and other sections as co-existing. The framing of such antithetical charges violates the principles of criminal jurisprudence and undermines the accused's ability to prepare a coherent defence, thereby infringing upon the right to a fair trial guaranteed under Articles 14 and 21 of the Constitution. The concurrent framing of these incompatible charges, constitutes a cumulative miscarriage and failure of justice, warranting the present application.

4. It is further contended that the present dispute is civil in nature and has been given a criminal colour, amounting to an abuse of process of law. Prosecution's case, including the FIR, charge-sheet and the witness depositions, demonstrates that the underlying transactions were commercial in nature involving purchase and sale of Government Securities and issuance of cheques for amounts allegedly due. Therefore the allegations, at the best make out a claim for recovery of money, which is enforceable through civil remedies and not through prosecution under the penal code. Therefore continuing the trial on the basis of allegations which arise for the commercial dispute amount to permitting the abuse of criminal process and causes irreparable prejudice to the accused. Hence the accused has filed present application thereby prayed to drop or alter the antithetical and unsustainable charges framed both under Sec. 406 and 420 of IPC. Accused is further seeking direction that the trial may recommence only after amending the charges. Hence the present application.

5. Prosecution has taken strong objection on this application by filing its say vide Exh. 962. It is contended that in the present matter offence is registered at Police Station, Dharashiv (City) bearing Cr. No 106/2002 on complaint given by Divisional Registrar co-op Societies, Latur for the offences punishable under Sec. 218, 406, 409, 420, 468, 471, 120B of IPC, on the basis of report of Special Auditor Class-1 (Bank), Latur. After completion of investigation, Investigating Officer submitted charge sheet against the 10 accused and thereafter charges have been framed by the

court against all the accused.

6. It is further contended that the present accused i.e. the accused No. 7 is head of the Home Traders at Washi, Mumbai which is not authorised Agency to take deposits and invest in shares. It is further contended that ODCC Bank received an amount of RS. 30 Crore from NDCC Bank on 31.01.2002 on its A/c No. 73/4701/01. Thereafter ODCC Bank transferred amount to account of Home Traders Washi Mumbai on its A/c No 3A/17031. It is further contended that present accused in collusion with accused No. 1 and 2 has deposited the amount in Home traders. Further there is sufficient documentary evidence against the present accused.

7. It is further contended that ODCC Bank has disobeyed legal formalities while investing share's with HTL. It is further contended that before 31.01.2002 there was no agreement or correspondence between HTL and ODCC Bank. The ODCC Bank had not taken precaution regarding RBI circular for investment of funds. All these facts have been mentioned in the charge sheet, in the report filed by the Special Auditor and are also deposed by the prosecution witnesses. Therefore the court has rightly framed the charge. It is further contended that there is sufficient oral and documentary evidence against the present accused, to prove his role in the offence that he has taken deposits in illegal manner to invest it in shares. The present accused in collusion with accused Nos 1 and 2 alongwith other accused has mis-appropriated huge amount

of Rs. 30 crore which is public money. Hence considering the above facts and circumstances the prosecution has prayed to reject the present application.

8. Heard both sides at length. On behalf of accused No. 7 learned Adv. Diyashri Kamanya has argued the matter through video conferencing. She has argued that in the present matter both the charges under Sec. 406 and 420 of the IPC have been framed against the accused simultaneously. However they are antithetical to each other. Further it is highly impracticable for the accused, the defend both the charges. She has further argued that the transaction in the present proceeding is commercial in nature which is given criminal color. Therefore continuing the trial on the basis of allegations which arises from commercial disputes, will cause irreparable prejudice to the accused. Hence she has argued to drop or alter in the antithetical charges under Sec. 406 and 420 of IPC and further to recommence the trial after amending the charges. In support of her contentions, she relied upon the following judgments of Hon'ble Supreme Court of India and Hon'ble Bombay High Court :

1. *Shikhar Chemicals Vs. State of Uttar Pradesh and another, reported in 2025 SCC OnLine (SC) 1643, Judgment dated 4th August, 2025 (Hon'ble Supreme Court of India)*
2. *Arshad Neyaz Khan Vs. State of Jharkhand and another, reported in 2025 SCC OnLine (SC) 2058, Judgment dated 24th September, 2025 (Hon'ble Supreme Court of India)*

3. *Delhi Race Club (1940) Ltd. And others, Vs. State of Uttar Pradesh and another, reported in 2024 SCC OnLine (SC) 2248, Judgment dated 23rd August, 2024 (Hon'ble Supreme Court of India)*

4. *Bharat Uttam Rajurkar and others Vs. State of Maharashtra, in Criminal Writ Petition No. 1232 of 2017 decided on 12th Jaunuary, 2018 (Hon'ble Bombay High Court, Bench at Nagpur).*

9. On the contrary learned APP Shri. Shevalkar for the State has argued in the line his say given to the present application.

10. Considering rival submissions of both sides and perusing entire available material on record it appears that accused No. 7 has filed present application for alteration of charges. There are two grounds taken for pressing the prayer for alteration of said charges. The first ground is that Prosecution's case demonstrates that the underlying transactions were commercial in nature involving purchase and sale of Government Securities and issuance of cheques for amounts allegedly due. Therefore the allegations, at the best make out a claim for recovery of money, which is enforceable through civil remedies and not through prosecution under the penal code. The second ground is that the charges framed under Sections 406 and 420 of IPC are antithetical and cannot co-exist, thereby violating the most basic principles of criminal jurisprudence and causing irreparable prejudice to the accused from the very inception of the trial and has led to complete failure of justice. To deal with both the above objections, it is necessary to look into the

prosecution story. The prosecution case, in short, is that all the ten accused have hatched the criminal conspiracy to cheat the ODCC Bank for Rs. 30 crore. At the relevant time deceased accused No. 1 was the Chairman of ODCC Bank while accused No. 10 was the Chairman of the NDCC Bank. There was a collusion between accused 1 and 10 to purchase Government securities to HTL, an unauthorized broker. Thereafter on 31.01.2002 the NDCC Bank got credited its 30 crore as a deposit in the account of ODCC Bank maintained with the Maharashtra State Co-Operative Bank Ltd., Mumbai. Then the ODCC Bank unauthorizedly credited the said amount of Rs. 30 crores in the account of HTL for purchasing Government Securities. Officer bearers of HTL then issued false contract notes of Government Securities worth Rs. 29,99,34,591/- to the officer of ODCC Bank and on the same day the HTL got credited an amount of Rs. 29,99,99,766.67 Ps. in the account of NDCC Bank with the Maharashtra State Co-Operative Bank Ltd., Mumbai. The HTL also issued false receipts of Rs. 29,99,34,591/- for the purchasing Government Securities and delivered it to the officer of ODCC Bank. On the same day i.e. on 01.02.2002 office bearer of HTL transferred Rs. 29,99,99,766.67 Ps in the account of NDCC Bank towards alleged sale proceeds of the Government Securities. It is further alleged that in the meeting held on 08.02.2002 of the Board of Directors of the ODCC Bank there was no discussion on the purchase of Government Securities from HTL and even then on the proceeding register wrong entry was made to the effect that there was resolution for purchasing Government

Securities and the Board of Directors have unanimously resolved to purchase Government Securities and that proceeding was signed by accused No. 1, 2 and 6. Thus it is the case of prosecution that deceased accused No. 1, Chairman of ODCC Bank and accused Nos. 2 to 6 being main office bearers of the said bank, without having prior permission from the Commissioner, Co-Operative Society, accepted deposit of Rs. 30 crore from NDCC Bank and in violation of RBI directions paid some of Rs. 29,99,34,591/- to HTL for Government Securities. Hence considering the prosecution case the Learned Predecessor of the Court has framed the charges against the accused vide Exh. 641.

11. Perusal of record further shows that the charges have been framed against the accused on 08.05.2014 vide Exh. 641. Perusal of record shows that the charge for the offence punishable under Sec. 120B of IPC has been framed all the accused, charges for the offences punishable under Sec. 409,468 and 471 r/w 34 of IPC have been framed against accused No. 3 to 5 , charges for the offences punishable under Sec. 406,468,471, r/w Sec. 34 of IPC have been framed against accused No. 7 to 9 and the charge for the offence punishable under Sec. 420 r/w 34 of IPC has been framed against accused No. 3 to 5 and 7 to 10. Hence it appears that accused No. 7 is charged with an offences punishable under Sec. 406,468,471,420 r/w Sec.34 of IPC and Sec. 120B IPC.

12. It is to be noted that before framing of charge, on 25.03.2008 the accused No. 7 i.e. present accused had filed an

application vide Exh. 407 for discharge under Sec. 239 of Cr.P.C. In the said application, alongwith other grounds, the accused had also taken ground that the transaction is purely civil in nature and not subject matter of Criminal Code. Further in view of order passed on the said application alongwith other two applications dt. 07.08.2017, the application for discharge came to be rejected. Hence from this it becomes clear that the application for discharge filed by accused No. 7 has been rejected by the court.

13. It is also important to mention here that before framing of charges the learned APP for State had filed draft of proposed charges vide Exh. 583 on 13.03.2014 and thereby prayed to frame the charges for the offences punishable under Sec. 120(b), 409,420,406,468 and 471 r/w Sec. 34 of IPC. Further it is to be noted that the accused No. 7 had filed written submissions at Exh. 606 on the said draft of proposed charges. Perusal of said written submission on the draft of proposed charges filed by accused No. 7 vide Exh. 606 shows that he had specifically mentioned therein that the provisions of Sec. 406 of IPC cannot invoke as the main ingredients required to attract the provisions of Sec. 405 and 406 of IPC are completely missing in the transaction under consideration. Further it was specifically mentioned in the said submissions that accused cannot be tried for the offences of cheating under Sec. 420 of IPC and Criminal Breach of Trust under Sec. 406 of IPC in the same trial. Sec. 406 and 420 of IPC cannot be applied simultaneously. Further there is no prima facie case against the accused under Sec. 406 r/w 34 and / or under Sec. 420 r/w 34 of

IPC. Perusal of record further shows that the learned predecessor of this court has passed detailed order below Exh. 1 on 06.05.2014. In the said order the court has considered all the written and oral submissions of the accused on the point of framing of charges. Further the contentions of the accused No. 7 that charges cannot be framed under Sec. 406 and 420 of IPC simultaneously, as well as the contention that the nature of transaction is civil which is given an criminal color, have been considered in detail by the court before framing of charges and only after considering all the objections taken by the present accused and other accused, the court, after passing detailed order in that regard below Exh. 1 on 06.05.2014, framed the charges against the accused below Exh. 641. Hence from the record it becomes clear that before framing of charge, all the accused were given an opportunity of hearing as required by Sec. 240 of Cr.P.C. and thereafter the charges have been framed against the accused.

14. Perusal of record further shows that charges have been framed against the accused on 08.05.2014. Thereafter prosecution has examined in all 22 witnesses till date. The matter is at its fag end. Further it is also important to mention here that as per the directions of Hon'ble Supreme Court of India this matter is required to be disposed of on or before 30th November, 2025. At this stage, the accused No. 7 has filed present application for alteration of charges. However as discussed hereinabove, both the objections of the accused have been thoroughly considered by the predecessor of this court before framing of charges itself and thereafter only

charges have been framed against the accused. Hence it appears that only to prolong the present matter, which is time bound by the Hon'ble Supreme Court of India, the accused has filed the present application.

15. Apart from this, if the application is considered on its own merits, then it appears that the accused has filed application for alteration of charges on two grounds as discussed hereinabove. As per the contention of the accused Prosecution's case demonstrates that the underlying transactions were commercial in nature involving purchase and sale of Government Securities and issuance of cheques for amounts allegedly due. The second ground is that charges framed under Sections 406 and 420 of IPC are antithetical and cannot co-exist. In support of his contentions, accused has relied upon various authorities of Hon'ble Apex Court and Hon'ble Bombay High Court. I have gone to the said authorities minutely and carefully. In view of ratio laid down by the Hon'ble Apex Court in the above said authorities relied upon by the accused, it becomes clear that there is distinction between the ingredients required to constitute both the offences i.e. offence of cheating and offence of criminal breach of trust. Both the offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. Further there is no doubt that the ratio laid down by the Hon'ble Apex and Hon'ble Bombay High Court is binding upon this court. However, with great respect, it is necessary to mention here that the facts of the above said authorities and the facts of the matter in hand are totally different. Hence the ratio laid down by

the Hon'ble Apex Court is not helpful to the accused in the present matter. In the present matter the prosecution case of scam of Rs. 30 crores by the Chairman and Bank Officers of the O.D.C.C. Bank and other accused, is based on peculiar facts and circumstances as stated hereinabove. On account of the nature of the acts or series of acts alleged against the accused, it is doubtful as to which of the several offences, the facts which may be proved will constitute and therefore in my opinion, by taking recourse of provision of Section 221 Cr.P.C., it was necessary to frame both the charges under Sec. 406 and 420 of IPC. Therefore said section is extracted as under :

221. Where it is doubtful what offence has been committed. -

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of subsection (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be), though he was not charged with such offence.

(c) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

16. The above illustration (a) below S. 221 Cr.P.C./Sec. 244 of BNSS amply clarifies the position. Hence considering the peculiar facts and circumstances of the prosecution case the charges have been framed against the accused. It is also important to mention here that nothing has been brought on record by the accused No. 7 to show that due to the framing of both the charges under Sections 406 and 420 of IPC, actual prejudice has been caused to the accused in taking defence. On the contrary if eventually both the offences are made out of distinct and separate transactions, then prosecution will be prejudice if one of the charge is dropped. Hence in view of above discussion, I do not find it proper to drop or alter the charges and recommence the trial as prayed by the accused No. 7. There is no merit in the application for alteration of charge and therefore application is liable to be rejected. Accordingly I pass the following order.

ORDER

Application filed by accused No. 7 below Exh. 953 is rejected.

Date:- 13/10/2025

(Smt. Pradnya V. Medhe)
Addl. C. J. M.Osmanabad.

CERTIFICATE

I affirm that, the contents of this P.D.F file judgment / order are same word to word, as per the original Judgment.

Name of stenographer	---	M.K.KULKARNI - GRADE-II
Court	---	Addl. Chief Judicial Magistrate, Osmanabad
Date of Dictation	---	13/10/2025
Typed on	---	14/10/2025
Order signed by the Presiding Officer on	---	15/10/2025
Order uploaded on	---	16/10/2025

True copy



N.S.Jaju Adv