

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 366 OF 2025

Sanjay Hariram Agarwal,
Age : 60 Years, Occu: Business,
R/o 7, Hari Sava Street, Kidderpore,
Kolkata – 700 023,
West Bengal.

... Applicant
[Orig. Accused]

Versus

The State of Maharashtra,
Through Police Station, Osmanabad,
Tq. & Dist. : Osmanabad.

... Respondent

.....
Mr. P. R. Katneshwarkar, Senior Advocate i/by Mr. N. S. Jaju,
Advocate for the Revision Petitioner.
Mr. S. A. Gaikwad, APP for the Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 09.12.2025

Pronounced on : 11.12.2025

JUDGMENT :

1. Revisionist-original accused no.7 hereby takes exception to the order dated 13.10.2025, rejecting his application Exhibit 953 seeking alteration or dropping of charges by invoking Section 216 of Cr.P.C.

2. In nutshell, it is the case of revision petitioner that, FIR No. 106 of 2002 was registered at Osmanabad Police Station for commission of offence under Sections 120B, 218, 406, 409, 420, 468, 471 r/w 34

of IPC against in all ten persons on the premise that, deceased accused no.1 and accused no.10 were Chairman of District Central Cooperative Bank, Osmanabad and Nagpur respectively. That, by colluding and conniving with each other and other accused, it is alleged that, an amount of Rupees Thirty Crores was transferred and credited from Nagpur District Central Cooperative Bank (NDCC Bank), of which accused no.10 was Chairman, to the account of Osmanabad District Central Cooperative Bank (ODCC Bank), of which accused no.1 was Chairman, and thereafter, at the instance of accused no.4, who was Deputy Chief Officer of Osmanabad District Cooperative Bank, along with accused nos. 1 and 3, unauthorizedly credited the above amount in the account of one Home Trade Limited (of which accused no.7-present revision petitioner is Director) for purchasing Government Securities and that, on the same day, an amount of Rs.29,99,99,766/- was again transferred to account of NDCC Bank. These all transactions, according to informant, were illegal, without prior permission of Commissioner of Cooperative Societies and moreover, it was in violation of rules of RBI. On above accusations, FIR came to be registered for above offence.

3. Learned senior counsel for revision petitioner pointed out that, revision petitioner is arraigned as accused no. 7 in above crime and

moreover, he is falsely involved in the above crime. According to learned senior counsel, there was no material to connect present revision petitioner with other accused in conspiring or conniving to commit above alleged transactions. Therefore, learned senior counsel pointed out that, when investigation did not reveal any incriminating material against present revision petitioner, he had applied for discharge under Section 239 of Cr.P.C. but the same came to be dismissed by order dated 07.08.2013.

4. Learned senior counsel would further submit that, here, there is patent illegality and irregularity on the part of investigating machinery as well as trial court in invoking both the provisions i.e. under Sections 406 and 420 of IPC, in one and the same case. Learned senior counsel would emphasize that, both these provisions cannot co-exist in one and the same case, as the same are antithetical and cannot go hand in hand. According to learned senior counsel, in spite of so and there being clear law laid down by the Hon'ble Apex Court regarding the above, charges have been framed which comprises both, the offence under Section 406 as well as under Section 420 of IPC along with other offences, which, according to learned senior counsel, is impermissible in the eyes of law.

5. Apart from above submissions, learned senior counsel would submit that, here, even going by the nature of allegations, there is no criminality attributable to the accused as the transactions were purely civil in nature, of which there is clear remedy of recovery by way of civil proceedings. Consequently, criminal action, according to learned senior counsel, is misdirected.

6. Learned senior counsel criticized the observations of the trial court in its order dated 13.10.2025 pointing out that there is non-consideration of settled legal position and now, at the time of answering Section 313 Cr.P.C., learned senior counsel submits that, because of the ambiguity created by virtue of charges being framed both, under Section 406 and Section 420 of IPC, accused is not in a position to take up his defence and as such, according to learned senior counsel, revision petitioner would be deprived of fair trial. For all above reasons, learned senior counsel has raised following prayers :

“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.”

7. Learned senior counsel, in support of his contentions, has placed reliance on the following rulings :

- a. *Delhi Race Club (1940) Limited and others v. State of Uttar Pradesh and another* (2024) 10 SCC 690.
- b. *Shikhar Chemicals v. State of Uttar Pradesh and another* 2025 SCC OnLine SC 1643.
- c. *Bharat Uttam Rajurkar and others v. The State of Maharashtra* [Cri. WP No. 1232 of 2017 decided on 12.01.2018 by this Court at Nagpur].
- d. *Om Prakash v. State of U.P.* 2023 SCC OnLine All 2817.
- e. *Anant Prakash Sinha alias Anant Sinha v. State of Haryana and another* (2016) 6 SCC 105.

8. In answer to above, learned APP pointed out that, there is no infirmity and illegality in the impugned order. He would point out that, at the time of framing charge, all accused were made aware of the nature of charge. That, subsequently, even charge has been framed and explained and plea of the accused is also recorded. Consequently, it is his submission that, there is no merit in the revision urging to alter or drop charge by invoking Section 216 of

Cr.P.C. According to learned APP, present revision petition itself is misconceived and not maintainable as, according to him, discharge application has already been rejected by the trial court. He would submit that, draft charges were made available and both sides were appraised about the contents of the charge and thereafter charge has been framed and so, objection raised at belated stage is, according to him, a clear attempt to evade or prolong trial. He further pointed out that present attempt of petitioner is merely to prolong and protract the trial which is already made time bound by the Hon'ble Apex Court being of the year 2002. He seeks reliance on the rulings of the Hon'ble Apex Court in *K. Ravi v. State of Tamil Nadu and another* reported in 2024 DGLS (SC) 816 and *P. Kartikalakshmi v. Ganesh and another*, reported in 2017 (3) SCC 347.

9. After considering the above submissions and on going through the papers, here, there seems to be challenge to the order of rejection to alter charge, pressed into service by present revision petitioner who is arraigned as accused no.7 in above referred crime bearing no. 106 of 2002 registered at Osmanabad Police Station for commission of offence under Sections 120B, 218, 406, 409, 420, 468, 471 r/w 34 of IPC.

10. Primary and fundamental submission of learned senior counsel is that, here, crime has been registered under both, Section 406 as well as 420, amongst other offences, however, above both charges cannot be invoked in one and the same matter as they are antithetical to each other. Learned senior counsel's another submission is that, accused is supposed to answer under Section 313 Cr.P.C. and therefore, he is unable to take a specific defence in view of charges being framed both, under Section 406 and 420 of IPC. Consequently, he has prayed for altering the charge/dropping the charge. Before the trial court, he had preferred application below Exhibit 953 in R.C.C. No. 398 of 2002 for either altering the charge or dropping either of the charge, and the same has been rejected.

11. Record shows that, in this case, FIR was registered on 05.05.2002. After investigation, charge has already been framed. Vide applications Exhibits 306, 407 and 502, present revision petitioner, along with other accused, had prayed for discharge by invoking Section 239 of Cr.P.C. The learned Chief Judicial Magistrate, Osmanabad, by order dated 07.08.2013, observed that, there was *prima facie* case for framing charge against all accused and no case being made out on merit for discharge, application Exhibit 407 of present revision petitioner along with other applications of two other

accused bearing nos. 306 and 502 came to be rejected by order dated 07.08.2013.

12. Record shows that, again present revision petitioner tendered application Exhibit 606, again seeking discharge and even this application, by order dated 06.05.2014, has been rejected and learned trial court has, in the concluding para observed that, matter is for framing charge but on account of absence of accused nos. 7 to 10, framing of charge has been adjourned to 08.05.2014. The learned Chief Judicial Magistrate also took a note and observed in the very order that, there were directions of the Hon'ble Apex Court to dispose off the matter by end of October, 2013 and such time has been extended till 31.10.2014, and thereby clearly directed all accused to remain present to answer the charge on 08.05.2014 without fail. Record shows that, on said date charge was also framed by learned Chief Judicial Magistrate.

13. Now, it appears that almost after more than a decade and when matter has reached the fag end of trial, in view of stage under Section 313 of Cr.P.C., surprisingly third attempt is taken, that too on the ground that Sections 406 and 420 cannot co-exist and do not go hand in hand and for the same, above referred rulings of the Hon'ble Apex Court are taken recourse to.

14. There is no dispute that, in view of above rulings of the Hon'ble Apex Court, both charges under Sections 406 and 420 cannot co-exist and are antithetical. Here, charge is already framed and there is no dispute to that extent. From copy of the charge it is emerging that amongst other offences, charges, both under sections 406 and 420 are framed. However, in view of the law laid down by the Hon'ble Apex Court in above relied cases, the same is not permissible. But, both charges can be framed in alternative and there is no illegality in the same. Consequently, to that extent, interference is called for. Hence, the following order :

ORDER

- I. Criminal Revision Application is partly allowed.
- II. The order dated 13.10.2025 passed below Exhibit 953 in R.C.C. No. 398 of 2002 by the learned Additional Chief Judicial Magistrate, Osmanabad is hereby quashed and set aside.
- III. Learned trial court to re-frame and explain the charge by framing charge under Section 406 and 420 in the alternative.
- IV. The revision is accordingly disposed off.

[ABHAY S. WAGHWASE, J.]

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