

IN THE HIGH COURT OF JUDICATURE AT _____
CRIMINAL ORIGINAL JURISDICTION

CRIMINAL APPLICATION NO. ____ OF 2025
(Under Section 482 of the Code of Criminal Procedure, 1973)

Applicant / Petitioner:

[Name of Applicant / Original Accused No. __ in RCC No. 398/2002]

Versus

Respondent:

State of Maharashtra

(Through _____ Police Station / Learned APP)

**CRIMINAL APPLICATION UNDER SECTION 482 CrPC TO QUASH
RCC NO. 398/2002 AND THE CHARGE DATED 08.05.2014**

MOST RESPECTFULLY SHOWETH:

1. JURISDICTION INVOKED

1.1 This Application is filed under Section 482 of the Code of Criminal Procedure, 1973, seeking exercise of the inherent powers of this Hon'ble Court to:

(a) quash the criminal proceedings arising out of RCC No. 398/2002 pending before the Learned Joint Civil Judge (SD) & Additional Chief Judicial Magistrate, Osmanabad ("Ld. ACJM"); and

(b) quash the common Charge dated 08.05.2014 framed against the Applicant under Sections 120-B, 406, 468, 471, 420, 34 IPC, insofar as they pertain to the present Applicant.

1.2 Continuation of proceedings against the Applicant is an abuse of process and contrary to settled Supreme Court law regarding the scope of Section 482 CrPC.

2. PROSECUTION CASE (AS ALLEGED)

2.1 The prosecution alleges that officers of Osmanabad District Central Cooperative Bank Ltd., Osmanabad (“ODCCB”), along with officials of Home Trade Ltd. (“HTL”), conspired to cause wrongful loss to ODCCB in Government Securities transactions of approximately ₹30 crores around January–February 2002.

2.2 According to the prosecution narrative, Nagpur District Central Cooperative Bank (“NDCCB”) allegedly placed/parked an amount of about ₹30 crores with ODCCB. ODCCB then transferred approximately ₹30 crores to HTL towards purchase of Government Securities. On the same day, almost the entire amount was allegedly credited back to NDCCB. It is alleged that this structuring was done at the instance of, and for the benefit of, NDCCB.

It is further relevant that:

- the then Chairman of NDCCB (arrayed as a co-accused, e.g. Accused No. 10) is being personally prosecuted;
- his alleged acts are all in his official capacity as Chairman of NDCCB, i.e. acts of NDCCB as an institution;
- yet NDCCB itself, the juristic/cooperative bank which actually handled and benefitted from the inflow/outflow of ~₹30 crores, has **not** been arraigned as an accused entity.

Thus, prosecution has chosen to proceed against the individual office-bearer in his personal capacity while omitting NDCCB as the real banking counterparty. This mirrors the approach taken vis-à-vis HTL.

2.3 The prosecution further alleges that this routing of funds and the manner of purchasing Government Securities through HTL was “irregular,” and therefore amounts to conspiracy, breach of trust, cheating, forgery, etc. A common charge was framed on 08.05.2014 against all accused, including the present Applicant.

2.4 As regards the present Applicant, the only allegation is that he, being an officer/authorised signatory of HTL, signed certain cheques / letters / contract notes “for and on behalf of HTL.” There is no allegation that he personally received any money, made any false representation at inception, or obtained any wrongful personal gain.

3. UNDISPUTED / DOCUMENTARY MATERIAL ON RECORD

3.1 Corporate identity and regulatory status of HTL

“HTL” is the same corporate entity that began as Lloyds Brokerage Ltd. (1993), was renamed Euro Asian Securities Ltd., and thereafter adopted the name Home Trade Ltd. The entity is continuous.

SEBI, by letter dated 09.08.2002, confirmed that HTL was registered as a stock broker on multiple recognised stock exchanges, including NSE, BSE, PSE, and OTCEI. RBI, by letter dated 07.10.2002, confirmed HTL’s registration to deal in Government Securities under Registration No. 6-H/83.

There is no evidence that SEBI, RBI, or NSE had prohibited HTL at the relevant time from entering into principal-to-principal Government Securities transactions with ODCCB.

3.2 Nature of the ODCCB–HTL transactions

The Contract Notes between ODCCB and HTL show the transactions were strictly on a “PRINCIPAL-TO-PRINCIPAL” basis. The “Brokerage” column is blank. HTL is described as “Counter Party Participant,” not as ODCCB’s broker/agent. No brokerage was charged.

Thus ODCCB and HTL were two independent principals. ODCCB’s payment to HTL was sale consideration for Government Securities. Beneficial ownership in that money passed to HTL, making HTL a debtor/seller owing delivery, not a trustee/bailee of ODCCB’s funds.

3.3 Arbitration clause and chosen forum

The same Contract Notes contain an arbitration clause requiring that all disputes “shall be referred to arbitration in Bombay” in accordance with NSE Rules/Bye-laws/Regulations, and they confer jurisdiction on Bombay/Mumbai Courts. ODCCB never invoked this agreed forum or arbitration mechanism, despite relying on the very same transactions to initiate criminal prosecution.

3.4 Flow of funds / no personal custody by Applicant

Funds moved from ODCCB to HTL. ODCCB and HTL are both juristic entities. There is no allegation that any amount was ever “entrusted” in the Applicant’s personal hands in a fiduciary capacity.

Despite that, neither HTL (the securities counterparty that received funds), nor ODCCB (the bank that paid funds), nor even NDCCB (the bank that allegedly caused/benefitted from the transfer and whose Chairman is named) has been arraigned as an accused entity. Instead, the prosecution has selectively arraigned individual office-bearers in their personal capacity — including the Chairman of NDCCB at the relevant time — though their alleged acts were strictly in an official/representative capacity.

3.5 Regulatory character of the allegation

The RBI Circular dated 04.09.1992 describes certain practices by co-operative banks in investment of funds in Government Securities as “irregular.” It does not declare such transactions to be inherently criminal, nor does it convert principal-to-principal Government Securities trades (including physical settlement) into cheating, breach of trust, conspiracy, or forgery.

3.6 Annual Report disclosures confirming HTL’s NSE status

The prosecution itself relies on HTL’s Annual Report and audited financials for FY 2000–2001. That Annual Report shows:

- HTL had obtained membership on the National Stock Exchange (NSE) in both the Capital Market Segment and the Debt / Wholesale Debt Market Segment;
- HTL had deposited substantial funds / margins with NSE in accordance with prescribed norms to conduct business in both those segments;
- HTL had effectively migrated to proprietary securities operations (not classic “brokerage”), earning approximately ₹66.80 crores from sale of investments/securities in that FY, and reporting no “broking income” for that year.

In other words, HTL was a regulated, exchange-admitted, margin-funded securities house with authority to trade in both equity and debt / Government Securities segments. These are not the attributes of an unauthorised fly-by-night operator; they are the attributes of an NSE-cleared market participant dealing in Government Securities as principal.

This prosecution document therefore supports the Applicant: it confirms that the disputed dealings were commercial/proprietary securities trades between financial institutions, not a personal scam hatched by this Applicant. These transactions were off-market-principal to principal trades directly entered between HTL and ODCCB on mutually agreed delivery and payment terms.

4. GROUNDS FOR QUASHING

4.1 Absence of “entrustment”: Sections 406 / 409 IPC are not made out

To constitute criminal breach of trust under Sections 405/406 IPC, prosecution must show:

- (i) entrustment of property or dominion over property to the accused; and
- (ii) dishonest misappropriation of that entrusted property.

Here, ODCCB voluntarily transferred money to HTL as consideration in a principal-to-principal securities transaction. Title in that money passed to HTL as seller / counterparty. There is no allegation that this Applicant personally received or held ODCCB’s funds in a fiduciary capacity.

The Supreme Court has consistently held that without entrustment, Sections 405/406 — and by extension Section 409 — IPC cannot apply, and that non-performance of a commercial obligation after receiving consideration is, at worst, civil. (S.W. Palanitkar v. State of Bihar; Delhi Race Club (1940) Ltd. v. State of Uttar Pradesh, Criminal Appeal No. 3114 of 2024; Lalit Chaturvedi v. State of Uttar Pradesh, 2024 SCC OnLine SC 171).

No entrustment = 406/409 IPC fail as a matter of law.

4.2 This is a commercial / arbitral securities dispute, not a criminal case

The Contract Notes governing these very transactions:

- record that HTL and ODCCB were dealing “PRINCIPAL-TO-PRINCIPAL”;
- contain an arbitration clause requiring disputes to be referred to NSE arbitration in Bombay/Mumbai;

- confer jurisdiction on Bombay/Mumbai Courts. ODCCB never invoked this agreed contractual/arbitral remedy.

Separately, the prosecution itself relies on HTL's Annual Report (FY 2000–2001), which shows HTL was (i) an NSE-admitted member in the Capital Market Segment and in the Debt / Wholesale Debt Market Segment; (ii) had deposited substantial funds/margins with NSE as per norms; and (iii) was running proprietary securities off market principal to principal positions as a counter party to the trades, including Government Securities, with ~₹66.80 crores gain.

This proves HTL was a licensed, capitalised, exchange-regulated counterparty in the debt/gilt space. The dispute, even on prosecution's telling, is about how a sophisticated co-operative bank (ODCCB), a second co-operative bank (NDCCB), and a regulated securities house (HTL) structured and settled a Government Securities deal. That is a contractual/arbitral/commercial matter, not an IPC matter.

The Supreme Court has held that criminal prosecution cannot be used to enforce civil/commercial obligations or as recovery pressure.

4.3 No basis for vicarious criminal liability; selective arraignment of individuals while omitting the principal entities

The prosecution's approach is internally inconsistent and legally impermissible:

(a) HTL vs. Applicant:

The only "role" attributed to this Applicant is that he signed documents "for and on behalf of HTL."

Yet HTL — the corporate counterparty that actually received ODCCB's funds as consideration — has **not** been arraigned as an accused entity. Instead, the Applicant is being personally prosecuted.

(b) ODCCB / NDCCB vs. their office-bearers:

ODCCB was the bank that authorised and remitted funds. NDCCB was allegedly the bank whose money was routed and to whose benefit funds were allegedly credited back.

Despite this, neither ODCCB nor NDCCB — both juristic/co-operative banking entities — has been arraigned as an accused.

Instead, the prosecution has personally arraigned individual office-bearers, including the then Chairman of NDCCB (shown as a co-accused, e.g. Accused No. 10), even though his alleged acts are asserted to have been performed strictly in his official capacity as Chairman of NDCCB and not in his personal capacity.

This “sue the individual, spare the institution” model is exactly what the Supreme Court has condemned. The law is settled that an officer / director / chairman cannot be fastened with criminal liability under general IPC sections purely by virtue of holding office, unless:

- (i) the juristic entity itself is arraigned; and
- (ii) there are clear, specific allegations of that particular individual’s personal mens rea and overt acts.

This principle has been repeatedly affirmed in *S.K. Alagh v. State of U.P.* (2008) 5 SCC 662; *Maksud Saiyed v. State of Gujarat* (2008) 5 SCC 668; *Sunil Bharti Mittal v. CBI* (2015) 4 SCC 609; *Sharad Kumar Sanghi v. Sangita Rane* (2015) 12 SCC 781; *R. Kalyani v. Janak C. Mehta* (2009) 1 SCC 516; *Delhi Race Club (1940) Ltd. v. State of Uttar Pradesh* (2024); and *Anil Khandelwal v. Phoenix India & Anr.*, 2025 SCC OnLine SC 1883.

Here, neither HTL (the alleged securities seller), nor ODCCB (the alleged investor bank), nor NDCCB (the bank said to have benefitted) are arraigned, but their individual signatories / chairmen are. That is exactly the kind of selective, personalised criminalisation of official acts which the Supreme Court has held to be abuse of process.

There is no allegation that this Applicant acted outside his official role, for his own gain, or with an individual dishonest intent. On this ground alone, continuation of proceedings against him is untenable.

4.4 No “cheating”: Section 420 IPC is not disclosed

Cheating under Sections 415/420 IPC demands dishonest intention at the inception — a fraudulent inducement to part with property. A later dispute over performance is not cheating.

There is no allegation that the Applicant personally deceived ODCCB at inception or induced ODCCB to part with funds on a knowingly false promise. The grievance pleaded is purely about settlement of a securities trade.

4.5 Mutually destructive charges under Sections 406/409 IPC and 420 IPC

The prosecution simultaneously alleges:

- “criminal breach of trust” (Sections 406/409 IPC), and
- “cheating” (Section 420 IPC),
on the exact same transaction and the same fund flow.

These two theories cannot co-exist on identical facts:

- Breach of trust (406/409 IPC) requires that ODCCB *entrusted* its funds to the accused in a fiduciary capacity, retaining beneficial ownership, and that the accused then misappropriated those entrusted funds.
- Cheating (420 IPC) requires that ODCCB was *dishonestly induced at inception* to part with money, thereby voluntarily giving up both possession and title based on deception.

You cannot simultaneously claim, as to the same money at the same moment, “We entrusted you with our funds to hold for us,” and “You tricked us into transferring our funds to you by fraud, so title passed.” The mental elements exclude each other.

The Hon’ble Supreme Court in *Delhi Race Club (1940) Ltd. v. State of Uttar Pradesh*, Criminal Appeal No. 3114 of 2024, held that casually superimposing ‘breach of trust’ and ‘cheating’ on a single commercial transaction, without distinct factual foundations for each, is legally impermissible and itself an abuse liable to be quashed.

Here, prosecution has not pleaded any separate factual substratum for 420 IPC different from 406/409 IPC. That contradiction alone warrants quashing.

4.6 No forgery / false document: Sections 468 / 471 IPC collapse

Forgery (Section 463 IPC) requires creation of a “false document” as defined in Section 464 IPC — i.e. a document that lies about who made it or about authority.

Every document relied upon is openly signed by the Applicant in his own name, “for and on behalf of HTL,” on HTL letterhead and official logo. None pretends to be signed by ODCCB, RBI, SEBI, or any third party.

In Mohammed Ibrahim v. State of Bihar (2009) 8 SCC 751, the Supreme Court held that a document is “false” only if it tells a lie about its own execution/authority. A commercial document signed in an authorised capacity is not a “false document.” If there is no “false document,” Section 468 IPC (forgery for cheating) and Section 471 IPC (using a forged document) cannot stand.

4.7 No conspiracy (Section 120-B IPC) and no common intention (Section 34 IPC)

Section 120-B IPC requires proof of an agreement to commit an illegal act (or a legal act by illegal means). Section 34 IPC requires a pre-arranged common intention plus participation in furtherance of that intention.

There is not even a whisper in the complaint, charge-sheet, or the 08.05.2014 charge as to when, where, or how this Applicant allegedly entered into any such agreement, or what overt act he is said to have done in furtherance of any “common intention.”

The Ld. ACJM has simply invoked “conspiracy” and “common intention” in a blanket manner, without identifying the Applicant’s individual role. That does not satisfy Sections 120-B/34 IPC.

4.8 Regulatory “irregularity” ≠ IPC offence

The RBI Circular dated 04.09.1992 uses the term “irregular” for certain co-operative bank investment practices in Government Securities transactions and lays down prudential norms. It does not criminalise principal-to-principal Government Securities trades between a co-operative bank and an NSE-admitted securities house such as HTL.

Treating an alleged regulatory lapse or compliance deviation as if it were cheating / breach of trust / forgery is a misuse of criminal law.

4.9 Mechanical framing of charge = abuse of process

On 08.05.2014, a common charge was framed against all accused, including this Applicant, for offences under Sections 120-B, 406 , 468 , 471 , 420 and 34 IPC.

The charge order does not:

- identify any “entrustment” to this Applicant (for 406/409 IPC);
- identify any “dishonest inducement at inception” by this Applicant (for 420 IPC);
- identify any “false document” allegedly created/used by him (for 468/471 IPC); or
- identify any “meeting of minds” / “pre-arranged plan” (for 120-B/34 IPC).

In *Pepsi Foods Ltd. v. Special Judicial Magistrate* (1998) 5 SCC 749, the Supreme Court held that summoning and putting an accused to trial is a serious judicial act requiring application of mind. A mechanical, omnibus charge is itself an abuse, quashable under Section 482 CrPC.

5. LEGAL POSITION ON QUASHING UNDER SECTION 482 CrPC

5.1 In *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, the Supreme Court laid down categories in which the High Court must exercise its inherent powers, including:

- (i) where, even if taken at face value, the allegations do not constitute any offence; and
- (ii) where the proceeding is patently mala fide or an abuse of process.

This matter falls directly within those categories because, even accepting the prosecution version entirely:

- there is no entrustment to the Applicant (406/409 IPC fail);
- there is no dishonest intention at inception (420 IPC fails);
- 406/409 IPC and 420 IPC are mutually destructive on the same facts;
- there is no “false document” (468/471 IPC fail);
- there is no agreement / overt act (120-B/34 IPC fail);
- the entire dispute is commercial/arbitral between regulated counterparties (ODCCB, NDCCB, HTL);
- the prosecution has selectively arraigned individual chairmen/officials while sparing the juristic entities themselves; and

5.2 In *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*, (2021) 6 SCC 116, the Supreme Court reaffirmed that *Bhajan Lal* remains binding, and High Courts must step in to prevent misuse of criminal process.

5.3 In *S.K. Alagh v. State of U.P.* (2008) 5 SCC 662; *Maksud Saiyed v. State of Gujarat* (2008) 5 SCC 668; *Sunil Bharti Mittal v. CBI* (2015) 4 SCC 609; *Sharad Kumar Sanghi v.*

Sangita Rane (2015) 12 SCC 781; R. Kalyani v. Janak C. Mehta (2009) 1 SCC 516; Delhi Race Club (1940) Ltd. v. State of Uttar Pradesh (2024); and Anil Khandelwal v. Phoenix India & Anr., 2025 SCC OnLine SC 1883, the Supreme Court has held that officers or chairmen of juristic entities (whether a company or a co-operative bank) cannot be criminally prosecuted in isolation for alleged institutional acts unless (i) the entity itself is arraigned and (ii) there are specific, personal allegations of mens rea and overt acts.

That principle squarely applies here, where neither HTL, nor ODCCB, nor NDCCB is arraigned, but their signatories and the NDCCB Chairman (alleged to have acted only in his official capacity) are personally prosecuted.

5.5 In Mohammed Ibrahim v. State of Bihar (2009) 8 SCC 751, the Supreme Court held that a document is “false” only if it lies about who signed it / under what authority it was signed. A document signed “for and on behalf of HTL” by the Applicant in his own name is not forgery.

5.6 In Pepsi Foods Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749, the Supreme Court held that issuing process is a serious judicial act. A Magistrate must identify how each ingredient of each offence is made out against each accused, and cannot proceed mechanically.

5.7 In Delhi Race Club (1940) Ltd. v. State of Uttar Pradesh, Criminal Appeal No. 3114 of 2024, the Supreme Court held that the State cannot casually overlay “criminal breach of trust” and “cheating” upon a single commercial transaction because the factual elements of those two offences are mutually destructive: breach of trust requires entrustment and continued beneficial ownership with the complainant; cheating requires dishonest inducement at inception causing transfer of title. Where those core elements are not distinctly pleaded, continuation of prosecution is an abuse fit to be quashed.

In these circumstances, this is a textbook case for exercise of inherent jurisdiction under Section 482 CrPC.

6. PRAYER

In light of the facts, documents, delay, and settled law stated above, the Applicant most respectfully prays that this Hon’ble Court may be pleased to:

(a) QUASH AND SET ASIDE RCC No. 398/2002 pending before the Learned Joint Civil Judge (SD) & Additional Chief Judicial Magistrate, Osmanabad, including the common Charge dated 08.05.2014 framed against the present Applicant under Sections 120-B, 406 , 468 , 471 , 420 and 34 IPC, insofar as they pertain to the present Applicant;

(b) STAY all further proceedings in RCC No. 398/2002 against the present Applicant during the pendency and final disposal of this Application; and

(c) PASS such other and further orders as this Hon'ble Court may deem fit, proper and necessary in the interest of justice and to secure the Applicant's fundamental rights under Article 21 of the Constitution of India.

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

VERIFICATION / AFFIDAVIT

I, _____, Age _____ years, Occupation: _____, residing at _____, do hereby solemnly affirm that the contents of the above Criminal Application are true and correct to my knowledge and belief and based on the record of the case referred to herein.

Solemnly affirmed at Mumbai

This ___ day of _____, 2025.

Deponent

(_____)

Identified by:

Advocate for the Applicant

8. LIST OF ANNEXURES

Annexure A: Certified copy of Charge dated 08.05.2014 in RCC No. 398/2002.

Annexure B: Contract Notes between ODCCB and HTL showing (i) principal-to-principal dealings, (ii) no brokerage, (iii) arbitration clause conferring Bombay/Mumbai jurisdiction.

Annexure C: SEBI letter dated 09.08.2002 and RBI letter dated 07.10.2002 confirming HTL's registration as a broker / Govt. Securities dealer (Reg. No. 6-H/83).

Annexure D: HTL Annual Report and audited accounts for FY 2000–2001 showing (i) NSE Capital Market Segment and Debt / Wholesale Debt Market Segment membership, (ii) margin / fund deposits with NSE as per norms, and (iii) proprietary securities income (~₹66.80 crores) with no broking income, evidencing HTL's regulated status.

Annexure E: RBI Circular dated 04.09.1992 (Exh. 1581/4) describing certain practices as "irregular," demonstrating that any grievance is regulatory / prudential, not inherently criminal.