

R.C.C.No.573/2002
State Vs. Sanjay Agrawal & Ors.
CNR No.MHWR030003432002

ORDER BELOW EXH.894

(Date 8th January, 2026)

Perused the application and say thereon. Heard the learned counsels for accused No.1, accused Nos. 5, 8 and 11 to 13 and the learned A.P.P.

2] This is an application filed by accused No.1 under section 216 of the Criminal Procedure Code, 1973. He submits that the trial from its very inception has suffered from legal infirmities so fundamental that continuing the trial without ratification would amount to perpetuating miscarriage of justice. The charges framed against the accused persons are incompatible as the nature of dispute involved in the case is a civil and not criminal. Moreover, the accused was denied a proper opportunity to point out these defects before the charges were framed.

3] He further submits that, the dispute in this case arises out of a set of commercial transaction between M/s Home Trade Limited and Wardha District Central Co-operative Bank pertaining to purchase and sale of government securities during the year 2001-2002. There are few Principle-to-Principle sale and purchase transactions between Home Trade Limited and the bank. In the April, 2002, two cheque of sum Rs.28,03,27,270/- towards the sale proceeds to the bank were dishonored. The dispute was given criminal colour though it was of civil nature.

4] On 20.09.2012, the charges were framed against accused No.1 under section 406, 420 read with section 34 of I.P.C. along with other

accused persons. These charges were framed without any pre-charge hearing under section 239 of Cr.P.C. as can be seen from the charge framing order and roznama for that day and without affording accused No.1, any opportunity should demonstrate that the allegations, even if taken at face value, do not make out the alleged offence.

5] He further argues that the charges framed under sections 406, 420 of I.P.C. are legally antithetical and can not co-exists, thereby violating the most basic principle 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. The offence under section 420 of I.P.C. requires proof of dishonest intention at the inception of the transaction i.e. at the time of inducing the delivery of the property through deceit, whereas the offence under section 406 of I.P.C. applies when property is unlawfully entrusted to the accused, who subsequently develops dishonest intention and misappropriates it. These two offences can not arise from the same act or transactions as they are antithetical to each other.

6] He further submits that despite this well settled legal position, the court framed charges under both the sections i.e. sections 406 and 420 of I.P.C. as co-existing. The failure to provide the accused an opportunity to be heard under section 239 of Cr.P.C. before framing these mutually exclusive charges led to the prejudice caused. It violets the principle of criminal jurisprudence, thereby infringing upon the right to fair trial guaranteed under Article 14 and 21 of the Constitution. It constitutes cumulative miscarriage and failure of justice.

7] Accused No.1 submits that, continuing with the present charges would perpetuate the abuse of criminal process and caused further

irreparable prejudice to him. The matter required immediate correction to prevent further miscarriage of justice. Hence, he prays for drop / alter the charges framed both under sections 406 and 420 of I.P.C. He further prays to recommence the trial after amending the charges.

8] The prosecution has filed its say below Exh.903 and strongly opposed the application. It submits that the charges under sections 420 and 406 of I.P.C. were framed by the court on 20.09.2012 and the trial was commenced. Most of the witnesses are examined by the prosecution. The contentions in the application are hypothetical and probable final arguments in the matter. There is no provision in the Code of Criminal Procedure or the Bhartiya Nyaya Suraksha Sanhita regarding dropping or deleting charges already framed against the accused. Whether the charges framed against the accused are made out or not is now the matter of appreciation of evidence.

9] It further submits that when the ingredients of two different offences are seen then charges under both the offences need to be framed. In the present matter, as ingredients of both the offences under sections 420 and 406 of I.P.C. are seen, the court has framed the charges after application of judicial mind. The application is filed after 13 years of framing charges with an intention to prolong the trial. At this stage, dropping or deleting the charge amounts to indirectly discharge the accused. Hence, the prosecution prays for rejection of the application.

10] Accused Nos.5, 8 and 11 to 13 filed an application below Exh.934 for giving opportunity to argue the present application and it was allowed. By order below Exh.934, accused Nos.5, 8 and 11 to 13 were allowed to file their say and argue the application. Accused Nos. 5, 8

and 11 to 13 instead of filing reply filed a pursis below Exh.493 and submit that in all 16 witnesses are examined in the matter and at the fag end of the trial, when only investigating officer remained to be examined, accused No.1 has filed this application challenging the charge. Other accused persons are also affected due to such application as they are suffering since last 23 years. Accused Nos. 5 and 13 were the employees of Wardha District Central Co-operative Bank, Wardha and till date they have not received their service benefits.

11] The citations relied upon by accused No.1 are as follows;

- i] **Shikhar Chemicals Vs. State of U.P., [2025 SCC Online SC 1643],**
- ii] **Delhi Race Club (1940) Limited & Ors. Vs. State of Uttar Pradesh & anrs. [(2024) 10 SCC 690],**
- iii] **Bharat Uttam Rajurkar & Ors. Vs. State of Maharashtra [Criminal Writ Petition No.1232/2017 Bombay High Court, Nagpur Bench].**

Whereas the prosecution placed its reliance on the following citations;

- i] **Sushil Kumar Tiwari Vs. Hare Ram Sah & Ors. [2025 Cri.L.J. 3873],**
- ii] **Dr. Nallappareddy Sridhar Reddy Vs.State of A.P. & Ors. [2020(1) Crimes 198 (SC)].**

12] This application is filed on the basis of three main arguments by accused No.1 which are as follows;

- i] The dispute involved in the matter is of civil nature and criminal colour has been given to the same. Hence, no charges are made out against the accused person.

ii] Accused No.1 was not given pre-charge hearing as contemplated under section 239 of Cr.P.C., due to which he could not explain that the matter does not involve criminal dispute. This led to breach of criminal jurisprudence resulting in serious prejudice to accused No.1.

iii] Accused No.1 is charged for the offence punishable under sections 406, 420 of I.P.C. which are antithetical and can not mutually co-exist. Hence, the charges need to be deleted.

13] For the sake of the first argument i.e. dispute involves in the matter is of civil nature, accused No.1 relies upon citation in the case of **Shikhar Chemicals (supra)**, in which the core dispute was commercial transaction wherein the complainant claimed himself to be an unpaid seller. The appellant Shikhar Chemical owed money for yarn which the supplier M/s Lalita Textiles tried to recover via criminal complaint. The Hon'ble Supreme Court held herein that mere failure to pay a debt does not result in criminal breach of trust. In the present case, it is a specific complaint of Special Auditor that, the Home Trade Limited Company and its directors with the common intention received huge amount from the Wardha District Central Co-operative bank pretending to purchase the government security bond. It is also alleged in the first information report that the Home Trade Company Limited, its directors and the board directors of the bank in collusion have committed fraud.

14] From the above discussion, it is very clear that the Special Auditor has made all the criminal allegations against the Home Trade Limited Company, its directors and the directors of Wardha District Central Co-operative Bank. It is not a case that the bank has paid some amount to them and it has not received anything against the money paid. The dispute is not at all pertaining to sale of goods. Thus, dthe

ratio laid down in the above citation in respect of theory of unpaid seller and dispute of civil nature is nowhere applicable to this case. Thus, the argument that the matter involves civil dispute and no criminal charge is made out against accused no. 1 is not acceptable.

15] In support of its second argument i.e. accused No.1 was not given pre-charge hearing which caused serious prejudice to him, accused No.1 relied upon citation in the case of **Bharat Uttam Rajurkar (supra)** wherein the case was based on sections 216 alteration of charge and 239 of Cr.P.C. i.e. right to be heard before framing of charge. The Hon'ble Bombay High Court emphasised on mandatory provisions of law under section 239 of Cr.P.C. requiring the court framing the charge to give an opportunity of hearing to the accused before the charges framed. It was held that the mandate must be followed realistically and not presumptively. To record a finding that the accused were heard or not before the charge was framed, one needs to satisfy oneself from the noting made in the order-sheet of the case. The framing of charge is a serious business. In this case, the Hon'ble Bombay High Court has quashed and set aside the charge framed against the accused due to non compliance of section 239 of Cr.P.C. Admittedly, on perusal of order-sheet of the case in hand, there is nothing which shows that a formal hearing as required under section 239 of Cr.P.C. was accorded to the accused persons.

16] While replying this point, the learned A.P.P. placed reliance on the citation in the case of **Sushil Kumar Tiwari (supra)** wherein the Hon'ble Supreme Court has held that mere discovery of error, irregularity or omission in framing of charge does not *ipso facto* render the decision invalid. It is further held that even a case of non framing of charge is not liable to be discarded on that alone ground. The Hon'ble

Supreme Court has given certain guidelines wherein it stated that, what the court has to see is whether the defect in framing of charge has occasioned failure of justice i.e. whether it has prevented the accused from having a fair trial or denied them any opportunity to present a valid defect.

17] It is very clear from the record that, in the present case there was no pre charge hearing held, thus the provision under section 239 Cr.P.C. was not complied. As per law of precedent, the case law relied upon by the prosecution i.e. **Sushil Kumar Tiwari (supra)** which is of Hon'ble Supreme court will prevail over the case law relied upon by accused no.1 i.e. **Bharat Uttam Rajurkar (supra)** which is of Hon'ble Bombay High Court. Now, this court has to see in the present case whether the opportunity of fair trial and valid defence was given to accused no. 1 or not.

18] In the case in hand, the charges against the accused was framed on 20.09.2012. Thereafter, the first witness was examined on 08.10.2012 and further witnesses were examined so on. During this time accused no. 1 did not raise this objection. The accused was given fair opportunity to cross-examine the witnesses which he has availed at the fullest. It shows that the accused was never prevented from putting his valid defence. Resultantly, he was not prevented from having a fair trial. It itself shows that no prejudice was caused to the accused as after understanding the nature of charges framed against him, accused no. 1 has cross-examined the prosecution witnesses. Thus, non compliance of section 239 of Cr.P.C. in the present case has not vitiated the trial as held in the case of **Sushil Kumar Tiwari (supra)**. Thus, second argument put forth by accused No.1 has no force.

19] As far as the third argument from the side of accused No.1 is concerned, he has submitted that accused No.1 has been charged for the offence punishable under sections 406 and 420 of I.P.C. together which can not co-exist. He relied upon the citation in the case of **Delhi Race Club (supra)**. In this case, a businessman Mr. Vipinkumar Agrawal had filed a private complaint against the accused for committing an offence under sections 406, 420 and 120-B of I.P.C. According to him, he supplied grains to the club but was never paid for it, this amounted to be cheating. The Hon'ble Supreme Court discussed the case of **S.W.Palanitkar** in the same case and expounded the difference in the ingredients required for constituting offences of criminal breach of trust i.e. 406 of I.P.C. viz-a-viz the offence of cheating section 420 as follows.

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.

Similarly, in respect of an offence under section 420 IPC, the essential ingredients are: -

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 persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

20] Accused No.1 further relies upon the citation in the case of **Shikhar Chemicals (supra)** in which the case of **Delhi Race Club (supra)** was discussed. It was held that it has become a common practice to routinely and mechanically proceed to register 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 was held that the two offences can not co-exist simultaneously in the same set of facts. They are antithetical to each other. The two provision of these offences are not twins that they can not survive without each other.

21] The learned A.P.P. relied upon in the case of **Dr. Nallappa Reddy (supra)**. In this case, initially the charge-sheet was filed before trial court on 30.06.2012 for the offence under section 498 of I.P.C. along with section 3 and 4 of Dowry Prohibition Act. Later on 12.04.2013 the additional charge-sheet was filed for the offences under sections 420 and 406 of I.P.C. The charges were framed on 30.06.2012 for the offence under section 498-A of I.P.C. read with section 3 and 4 of Dowry Prohibition Act.

22] As per the order of the court on an application under section 216 of Cr.P.C., the trial court had framed the charges against the accused. When that order was challenged before the Hon'ble High Court, the order was set aside on the ground of procedure irregularities and it was left open to frame charge after providing both the parties an

opportunity of hearing. After hearing both the sides, trial court rejected the application for framing charges. When this order was challenged, the Hon'ble High Court set aside that order saying that the trial court did not disclose the reason for concluding that the ingredients of offence under section 406 and 420 of I.P.C. were not attracted. The Hon'ble High Court again directed to frame additional charges under section 406 and 420 of I.P.C.

23] The Hon'ble Supreme Court while deciding the case of **Dr. Nallappa Reddy** discussed the ratio in the case of **Omkarnarth Mishra Vs. State** which says *"It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not"*

24] The Hon'ble Supreme Court held that for the purpose of framing charge, the court needs to prima facie determine that there exist sufficient material for commencement of trial. In that case, the Hon'ble High Court had relied upon the record and concluded that the offence under section 406 and 420 are attracted and the Hon'ble Supreme Court allowed to frame additional charges for the offences under section 406 and 420 of I.P.C. together.

25] Now, this court has received two citations i.e. **Shikhar Chemicals (supra)** and **Dr. Nallappa Reddy (supra)**. Both the judgments are of the

Division Bench of the Hon'ble Supreme Court i.e. the co-ordinate benches. As per the doctrine of precedent, when a coordinate bench i.e. a bench of same strength has a difference of opinion and issue is not referred to a larger bench, the decision that will follow is the earlier decision in point of time. I am herewith guided by the citation in the case of **National Insurance Company Ltd. Vs. Pranay Sethi [AIR 2017 SC 5157]** wherein the Hon'ble Supreme Court has expressed the opinion that the dicta laid down in the decision, which was earlier in point of time would be binding precedent. Thus, in the present case, as the ratio laid down by the Hon'ble Supreme Court in the case of **Dr. Nallappa Reddy (supra)** is not discussed in the case of **Shikhar Chemicals (supra)**, the decision in the case of **Dr. Nallappa Reddy (supra)** will prevail.

26] As per the observation in the citation of **Dr.Nallappa Reddy (supra)** while framing of charge, the court needs to prima facie determined that there exists sufficient material for commencement of trial. My learned predecessor has framed the charges against accused No.1 in the year 2012, after seeing the prima facie ingredients of both the offences against accused No.1. Now, it is not the stage to given back and examine the same. Thus, as per the above ratio, there is no need to drop or alter charges of any of the offences in this case.

27] Thus, from the above discussion, it is made very clear that accused No.1 has failed to show that the dispute involved in the matter is of civil nature, non compliance of section 239 of Cr.P.C. caused serious prejudice to him which needs alteration of charge and the charges against him for the offence under sections 406 and 420 of I.P.C. can not co-exist which needs recommencement of trial in this case. Thus, the application needs to be rejected. Hence, I pass the following order.

ORDER

The application is rejected.

Wardha
Date: 08.01.2026

(G.V.Jangde-Deshpande)
Chief Judicial Magistrate,
Wardha.