

R.C.C. No. 398/2002**ORDER BELOW EXH.1**

1. Today matter is kept for re-framing of charge as per order of Hon'ble Bombay High Court passed in Cri. Revision Application No. 366/2025 on dated 11.12.2025.
2. Heard Ld. respective Advocates for accused No. 3,4,5,7,8,9 and 10. Further accused No. 9 also made oral submission in person. He has also submitted written submissions vide Exh. 1075.
3. Heard Ld. APP Shri. V.S. Shevalkar for State.
4. Considering submissions and perusing entire available material on record it appears that the accused No. 7 had filed an application for alteration of charges Vide Exh. 953. The main ground taken for pressing the prayer for alteration of charges was that the charges framed under Sections 406 and 420 of IPC are antithetical and cannot co-exist. Further in view of order passed below Exh. 953 dt. 13.10.2025 the said application came to be rejected. Thereafter against the said order, accused No. 7 preferred Revision Application before Hon'ble Bombay High Court, Bench at Aurangabad bearing Cri. Revision Application No. 366 of 2025. The Hon'ble Bombay High Court vide its order dt. 11.12.2025 in the above said Cri. Revision Application, quashed and set-aside the order dt. 13.10.2025 passed below Exh. 953. Further the Hon'ble Bombay High Court has specifically directed the Trial Court to re-frame and explain the charge by framing charge under Sec. 406 and 420 in the alternative. The Hon'ble

Bombay High Court had observed that both the charges under Sec. 406 and 420 cannot co-exist and are antithetical. It is further observed that both the charges can be framed in the alternative and there is no illegality in the same. It is necessary to reproduce observations of the Hon'ble Bombay High Court in para No. 14 alongwith the operative part of the above said order, which is as under :

14. There is no dispute that, in view of above ruling 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 the 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 dt. 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.*

Sd/-

[xxxxxxx]

Hence in view of directions of Hon'ble Bombay High Court in the above said Criminal Revision Application, today matter is kept for re-framing of charge against all the accused.

5. For the purpose of re-framing of charge, 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. Hence considering the prosecution case the Learned Predecessor of the Court had framed the charges against the accused vide Exh. 641.

6. On the point of re-framing of charge the Ld. advocate for accused No. 7 Shri. B.R.Mane has argued that the Hon'ble Bombay High Court has directed to re-frame the charge by framing charge under Sec. 406 and 420 in the alternative, meaning thereby the charge should be framed either under Sec. 406 or under Sec. 420, both charges cannot be framed in the alternative. However I am not agree with the said submissions for the simple reason that the Hon'ble Bombay High Court has very specifically directed this court to reframe the charge by framing charge under Sec. 406 and 420 in the alternative. The predecessor of this court had framed both the charges under Sec. 406 and 420 of IPC simultaneously. However as per the observations of Hon'ble Bombay High Court in Cri. Revision Application No. 366/2025, the same is not permissible. Therefore as per the directions of Bombay High Court both the charges can be framed in alternative. There is no question of dropping any of

the charge as stated by the accused. Hence this submission of accused No. 7 cannot be accepted. The other accused have also made the similar submissions. However for the reasons stated hereinabove the said submissions cannot be accepted.

7. Further in addition to this, the accused No. 9 has made oral submission as well as he has filed written submission vide Exh. 1075, wherein he has stated that even if the entire material available on record is accepted at its face value, no prima-facie case is made out against him so as to require re-framing of charge. He has further submitted that there is absolutely no evidence whatsoever against him in the entire charge-sheet. Further as per the evidence brought on record in the course of trial, the basic ingredients of the offences alleged to have been committed are not even prima-facie made out against him. He has specifically submitted that as per the prosecution case the amount towards the purchase of Govt. securities were transferred to Home Trade. Consequently, the said amount were directly received by the Home Trade. Therefore any alleged entrustment, if at all, was therefore to the company, namely Home Trade. However, the Home Trade has not been arrayed as an accused nor charge sheeted in the present case. Further the amount in question was directly credited into the bank account of Home Trade. He never had dominion, custody or control over the said funds in his personal capacity. Therefore there is no entrustment of property to him nor any proof of dishonest conversion. The alleged entrustment, if at all was between two

legal entities i.e. ODCC Bank and Home Trade. However neither ODCC Bank nor Home Trade has been charge sheeted as an accused. Therefore in the absence of it the continuation of proceeding against him is impermissible. In support of his contention he had relied upon various authorities of Hon'ble High Court and Hon'ble Apex Court. I have gone through the said authorities minutely and carefully. Most of the authorities relied upon by the accused are on the point of quashing of criminal proceedings. However it is to be noted that matter is kept for re-framing of charge only. The question as to whether the ODCC Bank or Home Trade should have been made accused or not, is not relevant at this stage. Further the contention of the accused that when the company / juristic person which is alleged to be the principal offender is not prosecuted, continuation of proceeding against its director or officer is impermissible is also irrelevant so far as re-framing of charge is concerned.

8. The accused No. 9 has further submitted that no case is made out against him either under Sec. 406 r.w. 34 of IPC or under Sec. 420 r.w. 34 of IPC. Further he has also submitted that no case is made out against him under Sec. 468 and 471 r.w. 34 of IPC. Further Sec. 34 of IPC is not attracted at all as well as Sec. 120 B of also not be attracted. Lastly he has submitted that the allegations of forgery, fabrication or invalidity of the contract notes is wholly untenable. At the highest, the dispute, if any, arises out of contractual obligation and is purely civil in nature. In support of above said contentions he has relied upon various

authorities of Hon'ble High Court and Hon'ble Apex Court. I have gone through the said authorities minutely and carefully. However, with great respect, the authorities relied upon by the accused are not helpful to him, for the reason that facts stated therein are different from the facts of the present matter. Further as discussed hereinabove the material available on record is sufficient to frame the charge against the accused under the above mentioned sections.

9. Perusal of record shows that already charges have been framed against the accused on 08.05.2014 vide Exh. 641. After framing of charges prosecution has examined in all 23 witnesses. Thereafter statements of all the accused except accused No. 7 have been recorded under Sec. 313 of Code of Criminal Procedure. Thereafter the accused No. 7 had filed the application for re-framing of charge vide Exh. 953. Further as stated hereinabove the said application came to be rejected and the revision application preferred by the accused No. 7 against the said order came to be allowed. At the cost of repetition, it is necessary to mention here that the Hon'ble Bombay High Court in the Cri. Revision Application No. 366/2025 has very specifically directed this court to re-frame and explain the charge by framing charge under Sec. 406 and 420 in the alternative. In view of the directions of Hon'ble Bombay High Court, in my opinion it is necessary to re-frame and explain the charge by framing charge under Sec. 406 and 420 in the alternative and there is no need to alter the remaining charges framed against the accused. Hence in

view of above discussion today I proceed to re-frame and explain the charge against all the accused by framing charge under Sec. 406 and 420 in the alternative. All the accused to take note of it.

Sd/-

Date:- 15/01/2026

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