

C202600001

IN THE COURT OF ADDL. LEARNED CHIEF METRO MAGISTRATE,
47TH COURT, ESPLANADE MUMBAI.

MA- 12026 IN-
CASE NO. 255 OF 2023

In FIR no. 65/2002 (Vishram Baug Police Station)

State of Maharashtra

Complainant

Vs.

Sanjay Hariram Agarwal

accused no 1

(applicant)

**APPLICATION UNDER SECTION 262 OF
BNSS/ SECTION 239 OF CRPC SEEKING
DISCHARGE**

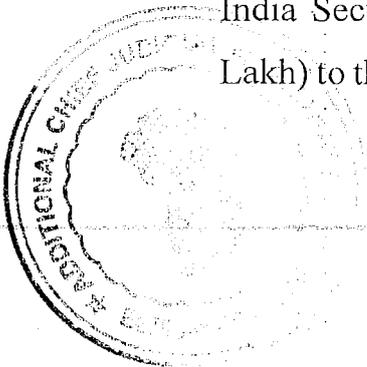
MAY IT PLEASE THIS HON'BLE COURT:

On behalf of Applicant/Accused No. 1, it is humbly submitted as under:

1. The present application is filed on behalf of Applicant/Accused No. 1, Mr. Sanjay Hariram Agarwal, seeking discharge under Section 262 of BNSS/Section 239 of the CrPC, 1973, in connection with Case No. 255 of 2023 pending before this Hon'ble Court.
2. The applicant has been arrayed as an accused pursuant to the FIR No. 65/2002 lodged at the instance of Suvarnayug Sahakari Bank Ltd. [hereinafter "The Bank"], wherein it is alleged that the company named Home Trade Ltd. [hereinafter "The HTL"] failed to deliver Government of India Securities worth Rs. 5,65,00,000/- (Rupees Five Crore Sixty-Five Lakh) to the Bank. Consequently, a chargesheet has been submitted against

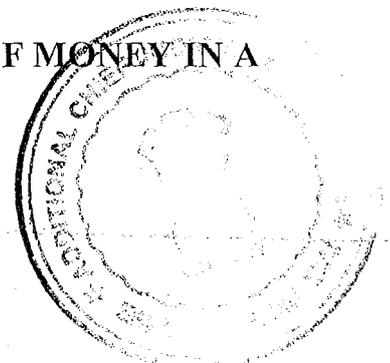


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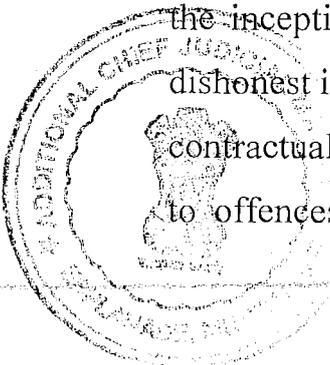


- several officials of the bank and the HTL. The applicant was arrayed as accused as he was at the relevant time one of the directors of the HTL.
3. At the outset it is submitted that there is no allegation whatsoever against the Applicant personally. The Applicant has been arraigned as an accused solely by reason of his designation as a Director of Home Trade Ltd. It is settled law that the Indian Penal Code does not create vicarious criminal liability in the absence of a specific statutory provision to that effect. In prosecutions under the IPC, directors or officers of a company cannot be mechanically implicated merely because of their position. In the present case, the prosecution material is completely bereft of any allegation against the applicant, and no prima facie material exists to sustain any of the charges alleged under Sections 406, 409, 420, 465, 468, 471, 109 and 34 of the Indian Penal Code. In such circumstances, the continuation of proceedings against Accused No. 1 would amount to a gross abuse of process of law.
 4. Under Section 239 CrPC, if upon consideration of the police report and the documents submitted, the Magistrate finds that the charge against the accused is groundless, the accused shall be discharged.
 5. The real test for determining whether the charge should be considered groundless under Section 239 CrPC is that whether the materials are such that even if unrebutted make out no case whatsoever, the accused should be discharged under Section 239 CrPC. Hence, at the current stage, This Hon'ble Court must have to consider, whether the materials relied upon by the prosecution against the applicant herein for the purpose of framing of the charge, if unrebutted, make out any case at all.
 6. That the application is made on the following grounds.

**MISUSE OF CRIMINAL PROCESS FOR RECOVERY OF MONEY IN A
PURELY CIVIL/COMMERCIAL DISPUTE**



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7. It is respectfully submitted that the present proceedings are a clear instance of the complainant attempting to criminalise what is, at its core, a contractual and commercial dispute. The allegations even if taken at their highest, relate only to non-delivery of Government of India Securities and an alleged consequent financial liability, which squarely falls within the realm of civil law remedies. The grievance of the Bank is thus one arising out of alleged contractual non-performance and commercial dealings between two corporate entities, and does not disclose any independent criminal intent or dishonest inducement so as to justify invocation of penal provisions.
 8. Significantly, the legal actions initiated by the complainant itself unequivocally demonstrates that the dispute is civil in nature. The Bank has already pursued civil remedies against Home Trade Ltd. by instituting Arbitration Case No. 272/2002. The said proceedings culminated in an Award dated 08.04.2003 directing Home Trade Ltd. to pay a sum of Rs. 6,09,68,023/- together with interest at 14% p.a. from 4th July 2002 till realization, along with costs of Rs. 5,000/-, within two months. In addition thereto, the Bank has also instituted Special Civil Suit No. 752/2002 before the Court of Civil Judge, Senior Division, Pune, seeking specific performance and recovery of the said sum independently of the arbitration proceedings. Once the complainant has itself treated the matter as a civil/commercial liability capable of adjudication before civil fora, continuation of parallel criminal prosecution on the same set of facts is wholly unwarranted and impermissible.
 9. There is not a single material on record to suggest any fraudulent intent at the inception of the transaction, any entrustment being misused, or any dishonest inducement attributable to the Applicant. Mere non-fulfilment of contractual obligations or alleged financial loss cannot, by itself, give rise to offences of cheating or criminal breach of trust. In this regard, the



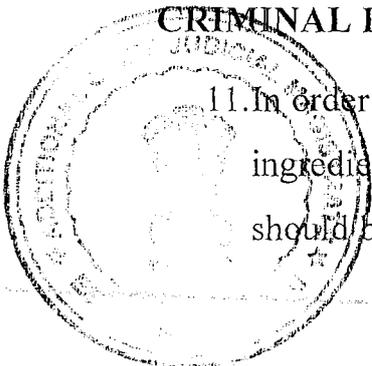
Hon'ble Supreme Court has repeatedly deprecated the growing tendency to give criminal colour to civil disputes. In *M/s Shikhar Chemicals v. State of U.P.*, 2025 SCC OnLine SC 1643, the Apex Court has observed:

"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."

10. In the present case too, the complainant having already invoked appropriate civil and arbitral remedies, the continuation of criminal proceedings is clearly motivated, vexatious, and an abuse of the process of law, intended only to exert undue pressure for recovery of money. The charge against the Applicant is therefore groundless and the Applicant deserves to be discharged at the threshold.

CRIMINAL BREACH OF TRUST

11. In order to prove allegations under Section 406 or Section 409 of IPC, the ingredients of Criminal Breach of Trust as defined under Section 405 should be satisfied. As delineated by the Hon'ble Supreme Court in **Delhi**



Race Club Ltd. v. State of U.P. [(2024) 10 SCC 690] [at para 36] the following are the ingredients of Section 406 IPC:

“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:

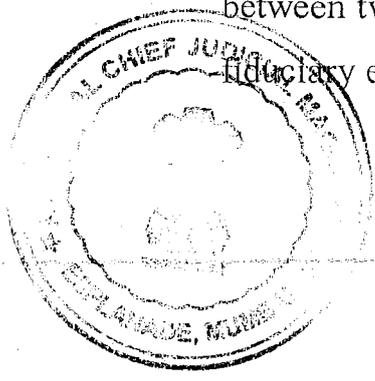
i. any direction of law prescribing the method in which the trust is discharged; or

ii. legal contract touching the discharge of trust”

12. The very foundation of the offence of criminal breach of trust lies in entrustment of property or dominion over property. Unless such entrustment exists, no offence under Sections 406 or 409 IPC can arise.

13. That there is not a whisper of any allegation that the Applicant had personal knowledge or involvement with the impugned transaction or that he was personally entrusted with any property.

14. Even with regards to HTL, the allegations in the chargesheet pertain to commercial transactions between the Bank and HTL, wherein the Bank claims that Government of India Securities worth ₹5,65,00,000/- were not delivered by HTL. The materials relied upon by the prosecution themselves indicate that the transaction was undertaken as a commercial dealing between two independent contracting parties, and not in the nature of any fiduciary entrustment.

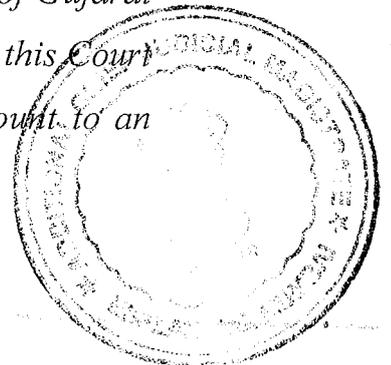


15. As held by the Hon'ble Supreme Court in **Delhi Race Club Ltd. v. State of U.P., (2024) 10 SCC 690**, the concept of entrustment does not extend to ordinary commercial transactions. The Court has lucidly held:

"From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it."

16. The Hon'ble Supreme Court in **M/s Shikhar Chemicals v. State of U.P., 2025 SCC OnLine SC 1643**, has reiterated that a commercial or sale transaction cannot amount to entrustment so as to attract criminal breach of trust. The Court observed:

"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 IPC. This position of law came to be explained by this Court almost six decades back in the landmark decision titled 'State of Gujarat v. Jaswantlal Nathalal', 1968 (2) SCR 408, wherein this Court stated that a mere transaction of sale cannot amount to an entrustment."



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17. In absence of such entrustment or dominion, the first and indispensable ingredient of Sections 406 and 409 IPC collapses against the applicant. Without a fiduciary relationship or personal custody of another's property, no offence of criminal breach of trust can arise in law.

18. In the present case, there is not a single material to suggest that any property was ever entrusted to the Applicant in his personal capacity, or that he exercised dominion over any property of the Bank. The allegation, even if assumed as true, pertains only to non-performance of a commercial obligation by the Company, for which civil remedies already stand invoked by the Bank before appropriate fora.

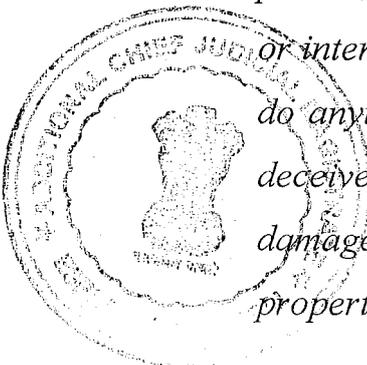
19. In light of the above, the essential precondition for invoking either Section 406 or Section 409 IPC, that is entrustment of property in a fiduciary or agency capacity is wholly absent. Consequently, the very substratum of the alleged offences collapses.

CHEATING

20. It is respectfully submitted that even if the allegations contained in the charge-sheet are accepted in their entirety, the essential ingredients of the offence of cheating punishable under Section 420 IPC are not disclosed against the Petitioner.

21. 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 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'."



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

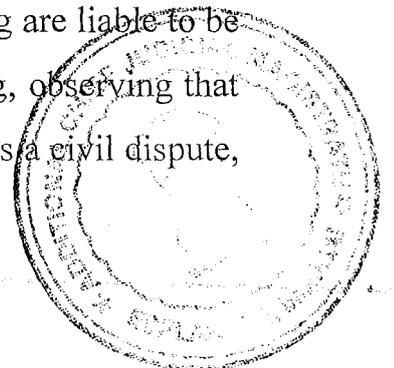
- “(1) Deception of any person, either by making a false or misleading representation or by other action or by omission;
- (2) Fraudulently or dishonestly inducing any person to deliver any property, or
- (3) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit”

23. Subsequent failure to fulfil a promise, or inability to perform a contract, does not by itself constitute cheating.

24. Applying these settled principles, the allegations in the present case show, at best, that the Bank entered into a commercial investment transaction with Home Trade Ltd. for purchase of Government Securities, and that the said transaction did not culminate in delivery. There is no allegation that HTL or the Petitioner personally made any representation known to be false at the inception, or that the Bank was deceived into parting with its money by any act of inducement or misrepresentation. The entire basis of the allegation is the non-performance of a commercial contract, which is civil in nature and cannot be converted into a criminal offence.

25. Even qua Home Trade Ltd., the material on record fails to show any allegation that the company possessed dishonest intention at the inception. Failure of performance or subsequent financial loss cannot retrospectively import mens rea or deception.

26. In *Anil Mahajan v. Bhor Industries Ltd.*, (2005) 10 SCC 228, the Hon'ble Supreme Court held that criminal proceedings for cheating are liable to be quashed where the allegations disclose only a civil wrong, observing that “the substance of the complaint is to be seen; if it discloses a civil dispute,



the criminal process should not be permitted to continue.” The present case falls squarely within that principle.

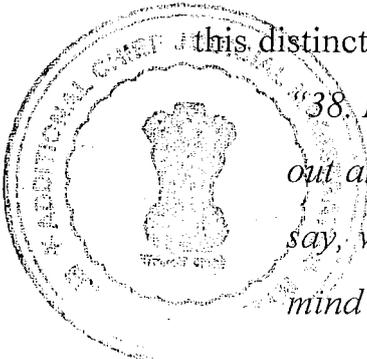
27. Accordingly, the essential elements of deception, dishonest inducement, and fraudulent intent are wholly absent. Even taking the prosecution’s case at its highest, the allegations reveal at best a breach of contractual obligations, not an offence of cheating within the meaning of Section 420 IPC. The continuation of criminal proceedings against the Applicant would, therefore, amount to a misuse of the criminal process and deserves to be discharged.

THAT THE CHARGES UNDER SECTION 406 AND 420 ARE ANTITHETICAL TO EACH OTHER AND CAN’T COEXIST.

28. It is respectfully submitted that the charges under Sections 406 and 420 of the Indian Penal Code are antithetical, and the essential ingredients of criminal breach of trust and cheating cannot coexist in respect of the same transaction.

29. That the charge sheet contains the charges under Sections 406 and 420 IPC together. 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.

30. The Supreme Court, in *Delhi Race Club (supra)*, in clear words 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 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.



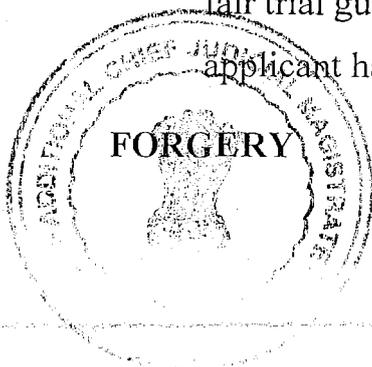
43. *There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach 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.*”

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

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

33. The framing of such antithetical charges is impermissible in law, 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. Thus, the applicant has to be discharged from the charges alleged.



34. In order to prove allegations under Sections 465, 468 and 471 of the Indian Penal Code, the ingredients of the offence of forgery as defined under Sections 463 and 464 IPC must first be satisfied. These foundational provisions delineate when a document can be said to be "false" and when its making amounts to "forgery."

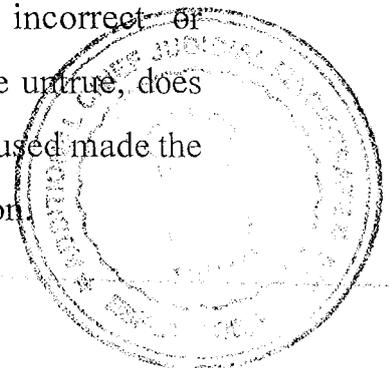
35. Section 463 IPC defines forgery as follows:

"Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

36. Section 464 IPC explains when a person is said to make a false document or electronic record. Broadly, a false document is made when a person:

- a. Dishonestly or fraudulently makes, signs, seals or executes a document, intending it to be believed that it was made or signed by another person; or
- b. Alters or tampers with an existing document without lawful authority; or
- c. Causes another to sign or execute a document knowing that such person does not know the contents or the nature of what he is signing.

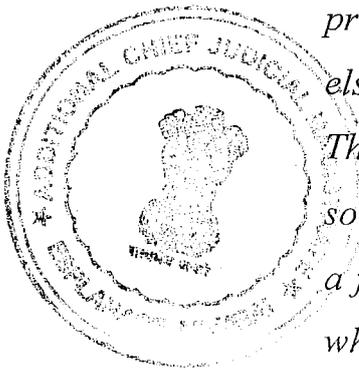
37. From these provisions, it is clear that forgery is the act of making a document that purports to be made by someone else or under false authority. Merely writing false recitals, or including incorrect or misleading contents in a document, even if later found to be untrue, does not by itself amount to forgery unless it is shown that the accused made the document pretending it was made or signed by another person.



38. The Hon'ble Supreme Court in *Mohd. Ibrahim v. State of Bihar*, (2009) 8 SCC 751, has clarified the true import of Sections 463 and 464 IPC. It was held that forgery involves the making of a document which is intended to be believed as having been made by someone else. The Court observed that:

"16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If



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there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.”

39. Thus, Section 464 fails to attract in the current case. It is submitted that if Section 464 fails, 468 and 471 automatically fail to apply.

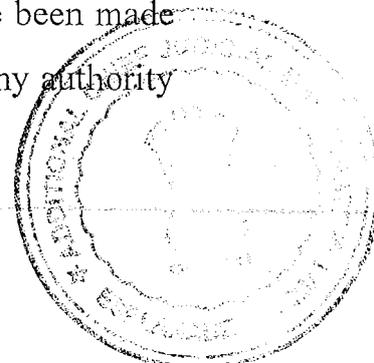
40. Even otherwise, to constitute an offence under Section 468 IPC, the following ingredients must be established:

- a. The accused made a false document or electronic record as defined in Section 464; and
- b. The making of such document was with the intent that it be used for the purpose of cheating.

41. The offence of Cheating is defined under Section 415 of IPC. There is no allegation that Accused No. 1 induced the Bank or any other person to part with property, nor any material indicating intent to deceive or cause wrongful loss or gain. The requisite mens rea of “intent to cheat” is wholly missing. In the absence of the allegation that the accused no. 1 acted with an intent to cheat, the necessary ingredients of Section 468 IPC are not satisfied even prima facie.

42. It is submitted that none of the essential elements of 471 are attracted in the present case. Even assuming without admitting arguendo that Accused No. 1 was a signatory to certain routine communications or documents in the ordinary course of the company’s business, such acts do not constitute “use of a forged document.”

43. To attract Section 471 IPC, it must be shown that the accused used a document which was made to appear as if it were executed by another person, thereby inducing others to believe that it originated from someone else. There is no such allegation or material in the present case. None of the documents relied upon by the prosecution purport to have been made on behalf of any other person, nor do they falsely represent any authority not possessed by the maker.



ABETMENT UNDER SECTION 109 IPC

44. It is submitted that the allegation of abetment under Section 109 IPC is wholly misconceived and legally untenable.

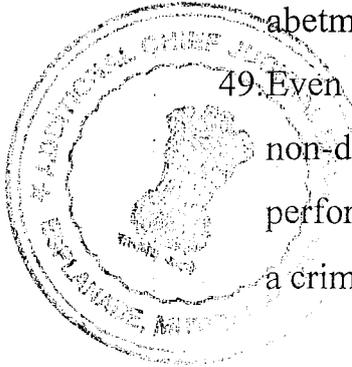
45. It is well-settled that abetment requires active instigation and cannot be inferred merely on the basis of association or status. The Hon'ble Supreme Court has consistently held that for abetment to be made out, there must be evidence showing intentional involvement in the commission of the offence and not mere presence, knowledge, acquiescence or silence. A vague or general allegation is insufficient to attract Section 109 IPC.

46. In the present case, the prosecution does not allege any overt act of instigation on the part of the Applicant. There is no allegation that the Applicant induced the Bank, deceived it, participated in any illegal design or facilitated commission of any offence. The only foundation of implication is that the Applicant was one of the Directors of Home Trade Ltd. at the relevant time, which, in law, is wholly insufficient.

47. In absence of such foundational material, the core requirements of Section 107 IPC collapse.

48. Further, Section 109 IPC being derivative in nature, presupposes existence of a legally sustainable principal offence. As demonstrated in earlier grounds, the allegations under Sections 406, 409, 420, 465, 468 and 471 IPC are themselves unsustainable for want of necessary ingredients. When the substratum of the alleged substantive offences fails, the allegation of abetment automatically falls to the ground.

49. Even otherwise, abetment requires mens rea of active complicity. Mere non-delivery of securities in a commercial transaction or alleged non-performance of contractual obligations cannot transform into abetment of a criminal offence. There is no allegation of criminal intent at inception, no



dishonest inducement, and no element of facilitation attributable to the Applicant.

50. It is submitted that the prosecution has not placed any material to suggest even prima facie existence of abetment as contemplated by law. The invocation of Section 109 IPC is, therefore, wholly mechanical, unsupported by evidence, and an abuse of process.

51. Accordingly, the allegation of abetment under Section 109 IPC is ex facie groundless and unsustainable. The Applicant is entitled to discharge on this count as well.

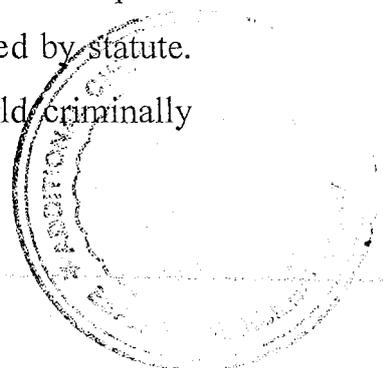
THAT THERE CAN'T BE VICARIOUS LIABILITY UNDER IPC

52. It is submitted that the entire set of allegations contained in the charge-sheet pertains to the acts and transactions of Home Trade Ltd. (HTL), the company through which the dealings with the Bank were undertaken.

53. The prosecution has not alleged that the said funds were paid to or retained by Accused No. 1 in his personal capacity. On the contrary, all payments were made to HTL's official accounts, and all documents emanated from or were executed on behalf of the company. The company, being a distinct legal entity, is alone answerable for its acts done in the ordinary course of business.

54. Though the company itself has not been arrayed as an accused, the prosecution seeks to fix criminal liability solely upon Accused No. 1, merely by virtue of his position as one of its directors. Such prosecution is impermissible in law and contrary to settled principles governing corporate criminal liability.

55. The Indian Penal Code does not create or recognise the concept of vicarious criminal liability except where specifically provided by statute. In absence of a statutory mandate, a director cannot be held criminally



liable for acts allegedly committed by the company unless there is evidence of his personal role and mens rea.

56. In *Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609*, the Hon'ble Supreme Court authoritatively held that a director or officer of a company cannot automatically be held liable for offences committed by the company unless there is sufficient evidence of his active role coupled with criminal intent, or the statutory provision itself specifically provides for vicarious liability.

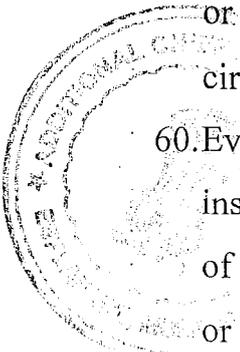
57. In *GHCL Employees Stock Option Trust v. India Infoline Ltd., (2013) 4 SCC 505*, it was held that a director cannot be proceeded against merely on the basis of his designation or position in the company. Specific acts and intent must be alleged and established against him individually.

58. In *Delhi Race club (Supra)*, it is observed that

“When Appellant 1 is the Company and it is alleged that the company has committed the offence then there is no question of attributing vicarious liability to the office-bearers of the Company so far as the offence of cheating or criminal breach of trust is concerned. The office-bearers could be arrayed as accused only if direct allegations are levelled against them. In other words, the complainant has to demonstrate that he has been cheated on account of criminal breach of trust or cheating or deception practised by the office-bearers.”

59. The prosecution case, even if accepted at its highest, relates entirely to the conduct of HTL in its dealings with the Bank. The alleged acts of omission or commission are all by and in the name of the company. In such circumstances, no liability or offence can be fastened on a director.

60. Even otherwise, the charge-sheet does not attribute any specific act, instruction, or decision to Accused No. 1 that constitutes the commission of any offence. The allegations, at best, refer to the company's transactions or its internal decisions.



61. The prosecution has also not alleged that Accused No. 1 derived any personal benefit or acted outside the scope of his official role as a director. In such circumstances, continuation of proceedings against him would amount to penalising corporate office per se, which is impermissible under the criminal law.

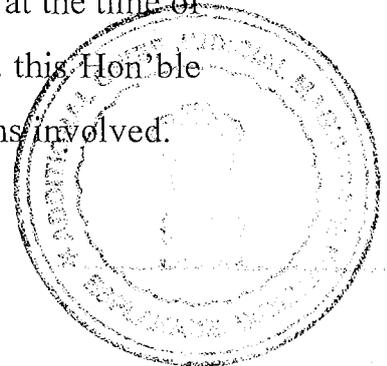
62. It is thus finally submitted that even if the entire material relied upon by the prosecution is taken at its face value, no offence under Sections 406, 409, 420, 465, 468, 471, 109 and 34 IPC is disclosed against Accused No. 1. The allegations, when analysed in light of the statutory ingredients and judicial principles discussed hereinabove, do not satisfy the basic elements of any of the charged offences.

63. The charge-sheet discloses at best a series of commercial transactions between the Bank and Home Trade Ltd., undertaken in the ordinary course of business. There is no allegation or material showing that Accused No. 1, in his personal capacity, either conceived, directed, or participated in any unlawful act.

64. The law is settled that a criminal prosecution cannot be founded on conjecture, suspicion, or mere association, and that the Magistrate must discharge the accused if the charge is "groundless." The cumulative effect of the above submitted grounds show that no material exists that could lead to a reasonable suspicion that Accused No. 1 has committed any offence. The charge, therefore, is "groundless" within the meaning of Section 239 CrPC. Continuing the proceedings would result in a misuse of the process of law and cause grave prejudice to the accused.

65. It is humbly submitted that the Applicant reserves his right and may kindly be permitted to place on record detailed written submissions at the time of hearing of the present discharge application, so as to assist this Hon'ble Court in appreciating the factual matrix and legal propositions involved.

66. Thus, it is most humbly and respectfully prayed that:



- 19
- a) The accused may be discharged from the present case.
 - b) Any other order may deem fit and proper may pass in the interest of justice.

Mumbai

Dated: 01/01/2026

S. M. Agarwal
~~Advocate for~~ Accused No. 1

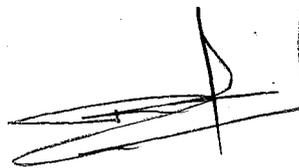

Adv. Dipak Mani VERIFICATION

I, Sanjay Hariram Agarwal, Aged: 60 years, Indian Inhabitant, Residing at: 7, Hari Sava Street, Kidderpore, Kolkata – 700023, the Applicant hereinabove, do hereby state on solemn affirmation, that whatever stated in foregoing paragraphs is true and correct to my own knowledge and belief and also on the legal advice I've received, which I believe to be true and correct and the contents last para is my humble prayers.

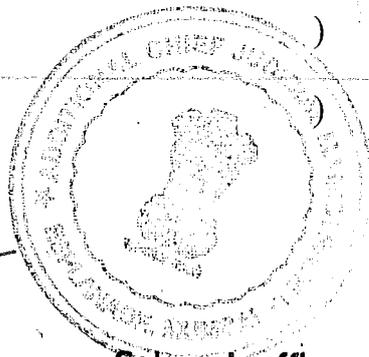
Solemnly affirmed at Mumbai)

Dated this 1st day)

January, 2026)



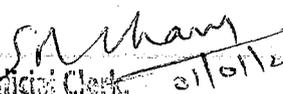
Identified by me



S. M. Agarwal
Applicant / Accused

Adv Dipak N. Mani.
Be Accused.

Solemnly affirmed before me
by Sanjay Hariram Agarwal
who is identified before me
by Adv. Dipak Mani
whom I personally know.
This 01 day of 01/2026


Judicial Clerk, 01/01/2026

Additional Chief Judicial Magistrate's,
47th Court, Esplanade, Mumbai.

Say on behalf of Prosecution,

① Offence registered against accused is of serious nature. Offence is registered and cognizable & non bailable.

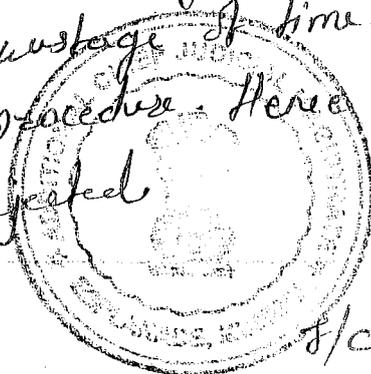
② Prima facie case is strongly made out against accused. It appears that accused is not of clean hands.

③ The case is old one & after many many years how he releases that he is innocent in this case. At the same time Hon'ble Courts mind is about to become charges.

④ The accused is director in the said Company. If we lift the corporate veil of Co. the real culprits we find is all directors of Company. How we say that directors are unaware. Confirmlly say that behind Company's name directors themselves are offenders.

⑤ If not done by directors then who committed the offence behind legal entity in name of Company. Directors can't run away from responsibility.

Prosecution has strange objection to said application as it is wastage of time & which enlarges the legal procedure. Hence the application deserves to be rejected.



Sharma

s/c App N.P. Ghouse

Mumbai
-1.1.00

True Copy
S. M. ...
Judicial Clerk,
Additional Chief Judicial Magistrate's
47th Court, ... Mumbai