

IN THE HIGH COURT OF JUDICATURE AT BOMBAY;
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO. _____/2026

PETITIONER: - Sanjay Hariram Agrawal

(Org. Accused)

VERSUS

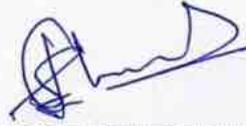
RESPONDENT: - State of Maharashtra

(Org. Applicant)

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NAGPUR

COUNSEL FOR PETITIONER

DATED: 09.02.2026 (ADV. SAGAR KISHOR LAMBAT)

I

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. OF 2026

DISTRICT : WARDHA

Sanjay Hariram Agarwal.

...PETITIONER

(Original Accused)

Versus

State of Maharashtra & Anr.

...RESPONDENTS

(Org. Applicant)

SYNOPSIS

SR. NO.	DATE	PARTICULARS
1	26.04.02	FIR No.110/2002 registered at Wardha Police Station alleging offences under Sections 406, 420 r/w 34 IPC against Home Trade Ltd. and its Directors including the present petitioner.
2	15.11.02	Charge-sheet filed before the Chief Judicial Magistrate, Wardha and registered as

		Regular Criminal Case No.573/2002.
3	20.9.12	Learned Trial Court framed charges under Sections 406 and 420 r/w 34 IPC without granting mandatory hearing to the petitioner under Section 239 Cr.P.C., thereby violating statutory safeguard and principles of natural justice.
4		Trial proceeded. Several witnesses examined. No specific or substantive role attributed to the petitioner.
5	2025	Petitioner noticed that charges framed are mutually inconsistent and antithetical in nature and that mandatory pre-charge hearing was not granted.
6		Petitioner filed application under Section 216 Cr.P.C. below Exh. 894 seeking correction/alteration of charges.
7	08.01.26	Learned Chief Judicial Magistrate rejected said application without considering prejudice caused to petitioner.

8	<p>Hence, the present Criminal Writ Petition challenging (i) framing of charges dated 20.09.2012 and (ii) impugned order dated 08.01.2026.</p>
<p><u>POINTS TO BE HEARD :-</u></p>	<p>1] Whether framing of charges without hearing under Section 239 Cr.P.C. is illegal and vitiates the trial?</p> <p>2] Whether offences under Sections 406 and 420 IPC can legally coexist on the same set of facts?</p> <p>3] Whether rejection of application under Section 216 Cr.P.C. is arbitrary and contrary to law?</p> <p>4] Whether impugned order violates Articles 14 and 21 of the Constitution of India?</p>
<p><u>ACTS & RULES :-</u></p>	<p>1. Constitution of India</p> <p>2. Code of Criminal Procedure, 1973</p> <p>3. Indian Penal Code, 1860</p>
<p><u>AUTHORITIE</u></p>	<p>At present nil.</p>

IV

<u>S:-</u>	
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NAGPUR

COUNSEL FOR PETITIONER

DATED: 09.02.2026 (ADV. SAGAR KISHOR LAMBAT)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR.

CRIMINAL WRIT PETITION NO _____ **OF 2026**

DISTRICT : WARDHA.

ACT CODE:- 09, Sub Code - 10

(Arising out of order dated 08.01.2026 in R.C.C No. 573 of 2002 passed by the Chief Judicial Magistrate, Wardha)

Sanjay Hariram Agarwal,

Age: 60 Years, Occu, : Business,

R/o 7 Hari Sava Street, Kidderpore,

Kolkata-700023, West Bengal.

....PETITIONER

(Original Accused)



VERSUS

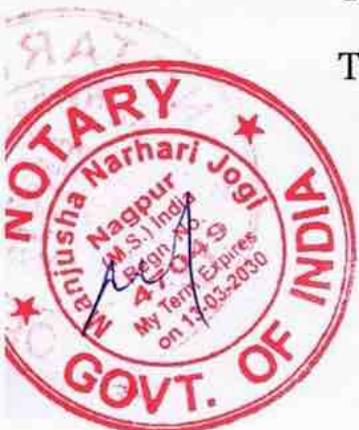
The State Of Maharashtra,

Through Police Station, Wardha,

Tq. & Dist. : Wardha.

... RESPONDENT

(Org. Applicant)



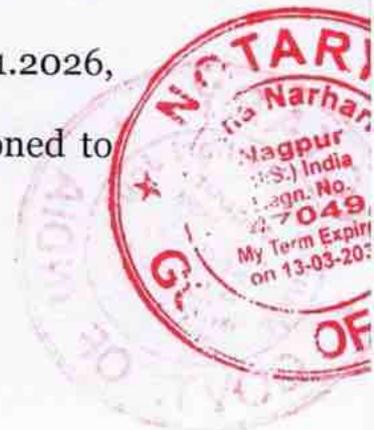
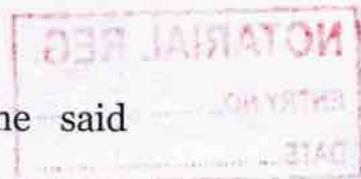
**WRIT PETITION UNDER ARTICLE 226 & 227 OF THE
CONSTITUTION OF INDIA**

THE PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH AS UNDER:-

1) The Petitioner submits that, the present writ petition is being filed against the order dated 08/01/2026, passed by the learned Chief Judicial Magistrate, Wardha in RCC No.573/2002, below Exh. 894. The petitioner-accused was denied a statutory right and a mandatory opportunity of hearing under Section 239 of the Code of Criminal Procedure prior to the framing of charges. Such denial has resulted in the framing of mutually inconsistent and legally unsustainable charges, causing serious prejudice to the petitioner.

2) The Petitioner submits that, in order to bring the said fundamental error to the notice of the learned trial court, the Petitioner had moved an application under Section 216 Cr.P.C. seeking correction/alteration of charges. However, the said application came to be dismissed vide order dated 08.01.2026, without considering the grave prejudice already occasioned to



the Petitioner and without examining the impact of such procedural lapses on the petitioner's right to a fair trial. The impugned course of action has thus resulted in a clear infringement of the petitioner's constitutional and statutory right to a fair and just trial.

- 3) The Petitioner submits that, the facts that have led to the filing of the present revision application are as follows. That the Petitioner was a director of Home Trade Ltd. [hereinafter "HTL"], a company registered with the Securities and Exchange Board of India (SEBI) as a stockbroker with the National Stock Exchange (NSE) and Bombay Stock Exchange (BSE), engaged in facilitating investments in government securities. That on 26.04.2002, an FIR bearing No. 110/2002 came to be registered at Wardha Police Station at the instance of the General Manager of Wardha District Central Co-operative Bank [hereinafter "the bank"], alleging offences under Sections 406, 420 read with 34 of the Indian Penal Code, arising out of certain investment transactions in Government securities undertaken through HTL, Mumbai. It is alleged that the bank paid around rupees 25 crores to HTL for purchase of Government Securities and that



HTL couldn't honour the contract in time. That in April 2002, allegedly two cheques issued by HTL to the sum of Rs. 28,03,27,270/- towards sale proceeds to the bank were dishonoured, which led to the lodging of FIR No. 110/2002. That pursuant thereto, a charge-sheet dated 15.11.2002 was filed before the Court of the learned Chief Judicial Magistrate, Wardha, and the case was registered as Regular Criminal Case No. 573/2002.

- 4) The Petitioner submits that, on 20.09.2012, the learned Chief Judicial Magistrate proceeded to frame charges under Sections 406 and 420 read with Section 34 IPC, without granting the Petitioner any opportunity of hearing as mandated under Section 239 Cr.P.C. The copy of charge framing order dated 20.09.2012 is annexed herewith and marked as **Annexure- A.**
- 5) The Petitioner submits that, the absence of any hearing prior to framing of charges is evident from the Roznama dated 20.09.2012, which is annexed herewith and marked as **Annexure-B.**
- 6) The Petitioner submits that, thereafter the trial proceeded and has presently reached the stage of evidence. Witnesses have



been examined so far; however, none of the prosecution witnesses have attributed any specific or substantive role to the Petitioner so as to attract the alleged offences.

- 7) The Petitioner submits that, at the present stage, when the Petitioner is soon required to enter upon his defence, it has become apparent that the charges framed against him are mutually contradictory and antithetical in nature, such that irrespective of the defence taken by the Petitioner, he is exposed to inevitable criminal liability under one charge or the other. Such framing of charges strikes at the very root of criminal jurisprudence and renders the trial inherently unfair.
- 8) The Petitioner submits that, in order to bring this grave illegality and resulting prejudice to the notice of the learned trial court, the Petitioner filed an application under Section 216 Cr.P.C. below Exh. 894, seeking alteration/correction of charges. That the said application came to be dismissed on 08.01.2026 on specious grounds without considering the grave prejudice caused to the Petitioner's right to a fair trial. The copy of application filed below Exh. 894, and the order dated



08.01.2026, passed below Exh. 894, are annexed herewith and marked as **Annexure-C**.

- 9) The Petitioner being aggrieved and dissatisfied by the impugned order dated 08.01.2026, passed below Exh. 894, by the Learned Judicial Magistrate First Class, Wardha, Petitioner prefers present Criminal Writ petition on the following amongst the other grounds as follows :-

GROUND

- I. That the failure to conduct a pre-charge hearing under Section 239 CrPC violated the Petitioner's right to Fair Trial and due process guaranteed under Articles 14 and 21 of the Constitution.
- II. That the accused was never granted an opportunity to be heard before the charges were framed, which prejudiced him from pointing out to the magistrate that no case is made out against him, even if the FIR and the chargesheet are read together.
- III. That the Roznama of the case shows no record of a hearing under Section 239 CrPC before charges were



framed on 20.09.2012. That the order of Charges dated 20.09.2012 shows no mention of any hearing granted to the accused.

- IV. That it is admitted in the impugned order as well that no hearing was given to the Petitioner before the framing of charges. Para 15 of the order reads as follows :-

“Admittedly, on perusal of ordersheet 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.”

- V. That Sections 239 and 240 CrPC mandate a hearing before framing charges to determine whether a prima facie case exists. That the trial court proceeded to frame charges without allowing the Petitioner to point out inconsistencies, such as the simultaneous framing of charges under Sections 406 and 420 IPC, which require distinct factual bases.

- VI. It is submitted that the court must consider the material on record and hear the accused to assess whether charges are warranted. That this hearing is a critical safeguard of



natural justice, enabling the accused to challenge the prosecution's case before trial. It ensures the court applies its judicial mind, preventing mechanical framing of charges and protecting against baseless prosecutions.

VII. That the absence of a hearing was not a mere technicality but a substantive failure. In *Bharat Uttam Rajurkar & Ors. v. State of Maharashtra [Criminal Writ Petition No. 1232 of 2017, Bombay High Court (Nagpur Bench)]*, the court addressed a similar lapse where the trial court assumed compliance with Section 239 Cr.P.C. merely because the accused was represented by counsel. Justice S.B. Shukre, quashing the charges, held:

"There cannot be any 'prima facie presumption' about the predecessor of the learned Magistrate having heard the accused persons before framing of the charge... Framing of charge is a serious business. When Sections 239 and 240 of Cr.P.C. mandate that charge must be framed after giving an opportunity of hearing to the accused, the mandate must be followed realistically and not presumptively."



The court further observed: *“The impugned orders clearly show that no such opportunity of being heard was ever granted to the petitioners before framing of the charge and, therefore, for this reason alone, the charge, as framed, against the petitioners deserves to be quashed and set aside.”*

VIII. That during the submissions, 3 other judgments i.e. *Ambadas Kashirao Kharad vs The State of Maharashtra [order dated 18.1.2007 in CRA NO. 338/2006]*, *Wasumati Ashok Thakre vs The State of Maharashtra [order dated 12.08.2010 in CRA NO. 135/2010]*, and *Khurshid Jaat Imran Jaat vs The State of Maharashtra [order dated 24.02.2025 in CRA NO. 25/2025]*, of this Hon'ble court were handed over to the Learned Judge which were not mentioned in the judgment. All of them uphold that opportunity of hearing must mandatorily be given before framing of charges.

IX. That instead of following the binding precedent of this Honourable Court on the exact issue on hand, the impugned order tries to ignore the precedent by taking



recourse to the judgment of Hon'ble Supreme Court in *Sushil Kumar Tiwari vs X5 v. Y1, 2025 SCC OnLine SC 1878*. Such reliance is wholly misplaced and proceeds on a complete misappreciation of the ratio of the said judgment.

- X. At the outset, it is submitted that *Sushil Kumar Tiwari* arose at the appellate stage, after the conclusion of trial, and concerned a minor defect in the charge relating only to the incorrect mention of the date of commission of the offence under the POCSO Act. The Hon'ble Supreme Court was not dealing with a case of total denial of a mandatory pre-charge hearing under Section 239 nor in case of antithetical charges framed under sections 406 and 420.
- XI. The Hon'ble Supreme Court in *Sushil Kumar Tiwari* expressly proceeded on the premise that the accused were fully aware of the allegations, the trial had proceeded without confusion, the defence had been effectively conducted, and the defect in the charge had not misled the accused nor occasioned any failure of justice. It was in



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that limited factual context that the Court held that a minor and curable defect, such as an incorrect date, would not vitiate the trial.

XII. In stark contrast, the present case concerns two foundational illegalities namely, the complete absence of a hearing under Section 239 Cr.P.C. and framing of antithetical charges. Both these defects strike at the very root of the charge-framing exercise. The denial of a pre-charge hearing under Section 239 Cr.P.C. deprived the Applicant of the statutory opportunity to demonstrate that no charge was made out at all, while the framing of antithetical charges under Sections 406 and 420 IPC reflects a manifest non-application of judicial mind at the threshold stage.

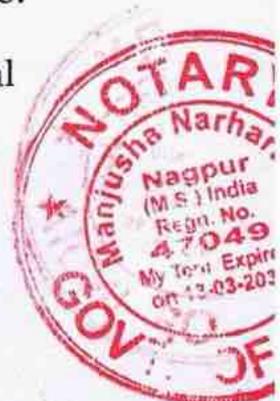
XIII. Unlike the minor factual irregularity considered in Sushil Kumar Tiwari, the errors in the present case are fundamental in nature that causes actual prejudice. They are not curable by mere participation in trial, cross-examination of witnesses, or passage of time. The prejudice occasioned is inherent, inasmuch as the



Applicant has been compelled to face a trial on legally incompatible charges without having been heard at the stage when the law mandates such hearing.

XIV. The framing of antithetical charges itself constitutes a serious error in charge, as it places the accused in an impossible position where any defence taken would necessarily admit the ingredients of the other offence. Such a situation necessarily results in a failure of justice and cannot be equated with a clerical or descriptive defect in the charge.

XV. Significantly, the Hon'ble Supreme Court in Sushil Kumar Tiwari itself emphasised that errors in framing of charge ought to be identified and corrected during trial and that the criminal procedure provides ample safeguards, particularly under Section 216 Cr.P.C., to rectify such defects at the earliest. The Petitioner, acting in strict conformity with this principle, invoked Section 216 Cr.P.C. to bring these grave illegalities to the notice of the trial court.



- XVI. However, instead of correcting the defects as contemplated by law, the trial court dismissed the Petitioner's application under Section 216 Cr.P.C., thereby perpetuating the illegality and allowing the trial to continue on charges which are ex facie unsustainable. Such refusal defeats the very object of Section 216 Cr.P.C. and renders the reliance on Sushil Kumar Tiwari self-defeating.
- XVII. The cumulative effect of these two foundational defects is that the petitioner is subjected to a trial which is inherently unfair, arbitrary, and violative of Articles 14 and 21 of the Constitution of India. The impugned order thus suffers from patent illegality and warrants interference by this Hon'ble Court in exercise of its writ jurisdiction.
- XVIII. It is respectfully submitted that the Learned Magistrate has committed a palpable error in law by failing to heed the binding precedent of the Hon'ble Supreme Court which holds authoritatively that 406 and 420 IPC are antithetical and cannot co-exist in the same charge.



XIX. That the charge framing order shows that charges under Sections 406 and 420 IPC have been framed concurrently without distinguishing the distinct nature of the offences. 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.

XX. In order to constitute an offence under Section 406 IPC, the ingredients of criminal breach of trust as defined in Section 405 IPC must be satisfied. Section 405 IPC defines "criminal breach of trust" as follows:

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be



discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

XXI. The Hon'ble Supreme Court in ***Delhi Race Club Ltd. v. State of U.P., (2024) 10 SCC 690***, has delineated the essential ingredients 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 wilfully 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*



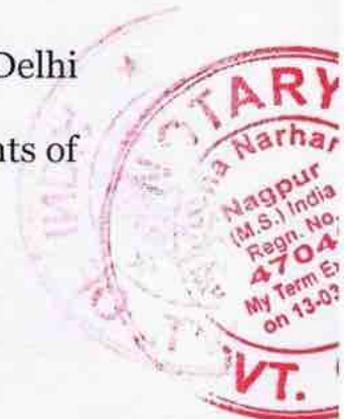
ii. legal contract touching the discharge of trust”

XXII. The very foundation of this offence is entrustment of property or dominion over property. Unless there is such entrustment, the offence of criminal breach of trust cannot arise. Then the element of mensrea in this offence appears at a subsequent stage i.e post lawful entrustment.

XXIII. 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’.”

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”

Subsequent failure to fulfil a promise, or inability to perform a contract, does not by itself constitute cheating. Here, the intention to commit the act or to induce the person should be there from the beginning.

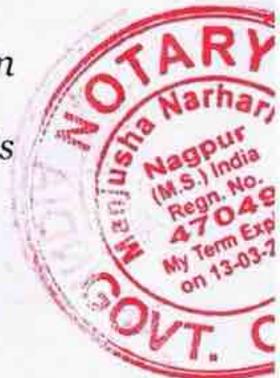
XXIV. The Supreme Court, in Delhi Race Club (supra), explicitly clarified this distinction, holding:

“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 406 IPC, 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.”

XXV. 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.”

XXVI. This proposition of law has been furthered in ***M/s Shikhar Chemicals v. State of U.P., 2025 SCC OnLine SC 1643*** and ***Arshad Neyaz Khan v. State of Jharkhand, 2025 SCC OnLine SC 2058.***



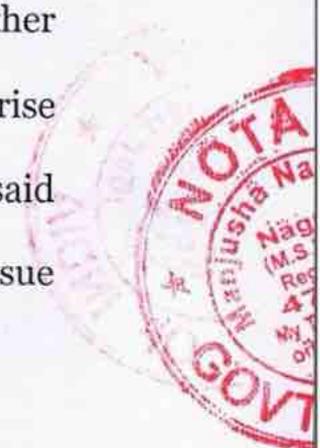
XXVII. The impugned order dated 08.01.2026, however places reliance on *Nallapareddy Sridhar Reddy v. State of A.P., (2020) 12 SCC 467*, and such reliance is wholly misconceived and legally unsustainable. A careful reading of the said judgment would reveal that the Hon'ble Supreme Court was never called upon to decide, nor did it render any categorical finding on, the question whether offences under Sections 406 and 420 IPC can be framed simultaneously on the same set of facts.

XXVIII. Further, the reasoning adopted in paragraphs 24-25 of the impugned order shows a fundamental misunderstanding of the doctrine of precedent and a complete misreading of the judgments relied upon. The conclusion that Dr. Nallapareddy Sridhar Reddy constitutes a binding precedent on the coexistence of Sections 406 and 420 IPC is ex facie erroneous. At the outset, it is respectfully submitted that the question whether Sections 406 and 420 IPC are antithetical and cannot co-exist on the same set of facts was not a point



for determination, in *Nallapareddy*. The Hon'ble Supreme Court in the said case was concerned only with the question of whether post conclusion of trial and reserving the judgment, can an application under section 216 be allowed and court held that alteration under 216 can be allowed at any stage. The Court did not undertake any examination of the conceptual incompatibility between cheating and criminal breach of trust, nor did it lay down any ratio holding that both offences can be framed together as a matter of law.

XXIX. A judgment is a precedent only for the issue that was directly and substantially in issue and actually decided. Observations made in a different factual or legal context cannot be elevated into a binding ratio. In *Nallapareddy*, the Hon'ble Supreme Court neither framed nor answered the legal question as to whether Sections 406 and 420 IPC can simultaneously arise from the same transaction. Consequently, the said decision operates, at best, sub silentio on this issue



and cannot be treated as an authority permitting the coexistence of the two offences.

XXX. In sharp contrast, the precise legal issue namely, whether offences under Sections 406 and 420 IPC can co-exist on the same factual foundation squarely arose for consideration and was conclusively decided by the Hon'ble Supreme Court in ***Delhi Race Club Ltd. v. State of U.P., (2024) 10 SCC 690***. After an exhaustive analysis of Sections 405, 406, 415 and 420 IPC, the Hon'ble Supreme Court categorically held that the two offences are mutually exclusive, incompatible, and antithetical, and therefore cannot be invoked simultaneously on the same set of facts.

XXXI. The Learned Magistrate's invocation of the principle stated in ***National Insurance Company Ltd. Vs. Pranay Sethi [AIR 2017 SC 5157]*** is wholly misplaced. The rule that an earlier decision of a coordinate Bench may prevail applies only when both judgments decide the same legal issue and there exists a genuine conflict of ratio. Where one judgment



(Nallapareddy) does not decide the issue at all, and the other (Delhi Race Club) directly and authoritatively answers it, the question of choosing between “earlier” and “later” decisions does not arise.

XXXII. It is further submitted that there is no conflict of precedents between Nallapareddy and Delhi Race Club. The former is silent on the incompatibility of Sections 406 and 420 IPC, whereas the latter directly adjudicates and settles the issue. The Learned Magistrate, therefore, erred in treating Nallapareddy as prevailing law and in disregarding Delhi Race Club, which alone constitutes a binding precedent on the point in issue.

XXXIII. The subsequent decisions of the Hon'ble Supreme Court in M/s Shikhar Chemicals v. State of U.P. and Arshad Neyaz Khan v. State of Jharkhand, which expressly rely upon and reaffirm the ratio of Delhi Race Club, further fortify the position that the law on this issue now stands conclusively settled.



XXXIV. The impugned order thus proceeds on a legally flawed premise by relying on a judgment which did not decide the issue into a binding precedent, while ignoring the authoritative pronouncement of the Hon'ble Supreme Court which directly governs the field. This constitutes a manifest error of law apparent on the face of the record and renders the impugned order unsustainable.

XXXV. That the Learned Magistrate has further erred in making observations in the impugned order which amount to a premature determination on the nature of the dispute, thereby prejudicing the Petitioner's right to a fair and impartial trial.

XXXVI. The observations at paragraph 14 of the impugned order made to reject the petitioner's contention that the matter involves civil dispute, partake the character of final findings, notwithstanding that the trial is still pending. The recording of such definitive conclusions may influence the final adjudication as they create a reasonable apprehension that the trial court has

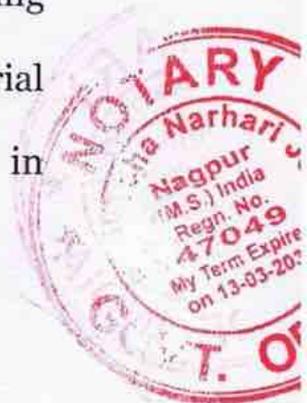


already formed a concluded opinion on the merits of the case.

XXXVII. Such premature conclusions are likely to have a direct bearing on the conduct of the trial and the appreciation of evidence, and therefore vitiate the requirement of a fair, unbiased, and open-minded adjudication, as guaranteed under Article 21 of the Constitution of India.

XXXVIII. The impugned order, to the extent it records such conclusive observations, is therefore liable to be interfered with, and it is respectfully submitted that the said observations ought not to influence the trial or the final adjudication on merits.

XXXIX. It is respectfully submitted that the impugned order dated 08.01.2026, in Regular Criminal Case No. 573/2002, suffers from patent illegality, violating petitioner's Fundamental right to Fair Trial warranting interference by this Hon'ble Court in exercise of its extraordinary jurisdiction.



10. The Petitioner submits that the Petitioner is approaching this Hon'ble Court as early as possible without any delay, The Hon'ble Supreme Court has expediated the present proceedings and directed it to be disposed off within 6 months from the same of order.

11. The petitioner undertakes to give the English translation of Marathi documents as and when directed by this Hon'ble Court.

12. The petitioner seeks liberty to add, amend, modify or delete any of the paragraphs or ground of the present Writ Petition as and when it is necessary.

13. The petitioners submit that he has not filed any other petition regarding the same subject matter in this court, before the Supreme Court of India, or before any other court.

14. The petitioner undertakes to remove the office objections, if any, as and when required.

HENCE THIS PETITION

PRAYER:-



It is, therefore, most humbly and respectfully prayed before this Hon'ble Court that, it may be pleased to: -

- A) That, Writ Petition may kindly be allowed.
- B) That the impugned order dated 08.01.2026, in Regular Criminal Case No. 573/2002 passed by the learned Chief Judicial Magistrate, Wardha below Exh. 984, may be quashed and set aside;
- C) *That it may be held* and declared that the framing of charges dated 20.09.2012, framed by learned Chief Judicial Magistrate, Wardha in Regular Criminal Case No. 573/2002 is vitiated on account of non-compliance with Section 239 Cr.P.C. and the framing of mutually antithetical charges under Sections 406 and 420 IPC;
- D) Direct the learned trial court to reframe the charges, after granting the Petitioner an opportunity of hearing under Section 239 Cr.P.C;
- E) Pending hearing and final disposal of the present matter further proceedings in Regular Criminal Case No. 573/2002, pending before learned Chief



Judicial Magistrate, Wardha, may be stayed and suspended.

- F) Ad-interim relief in terms of prayer clause "E" may kindly be granted.
- G) And/ or to grant any other relief to which Petitioner is found entitle to in the fact of the present case and law.

AND FOR THIS ACT OF KINDNESS THE PETITIONER, AS IN DUTY BOUND, SHALL EVER PRAY.

NAGPUR

DATE: 09.02.2026



**COUNSEL FOR PETITIONER
(ADV. SAGAR LAMBAT)**



SOLEMN AFFIRMATION

I, Sanjay Hariram Agrawal, Aged about 60 years, Occ. Business, R/o. 7, Hari Seva Street, Kidderpore, Kolkata, do hereby take an oath and state on the solemn affirmation that the contents of above all Para's 1 to 14 of the petition including grounds are drafted by my counsel wholly as per my instructions and the same are read over and explained to me in



my vernacular language which I have understood and I say and submit:-

Hence verified and signed on this 09th day of February 2026 at Nagpur.

NAGPUR

DATE: 09.02.2026

I know and identify the deponent


Advocate

(Adv. Sagar K. Lambat)

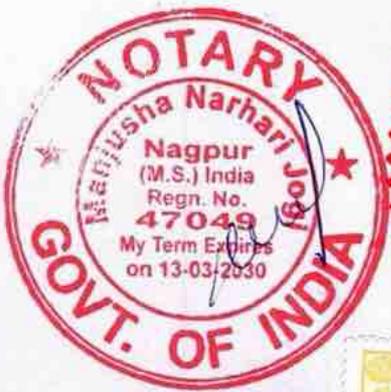
S. H. Agrawal

DEPONENT

(Sanjay H. Agrawal)

Sworn before me on this 9th dt.
day of Feb. 2026 at Nagpur by
Shri/Smt./Ku. Sanjay H. Agrawal
R/o. K. K. Lambat who has been identified
by Shri/Smt. Adv. Sagar K. Lambat
Advocate, Nagpur.


**NOTARY
NAGPUR (M.S.) INDIA**



IN THE HIGH COURT OF JUDICATURE AT BOMBAY;
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO. _____/2026

PETITIONER: - Sanjay Hariram Agrawal

(Org. Accused)

VERSUS

RESPONDENT: - State of Maharashtra

(Org. Applicant)

LIST OF ANNEXURES

Sr. No.	Anne .	Particulars	Date	Page No.
1	A	True copy of order dated 20.09.2012 passed by the Chief Judicial Magistrate, Wardha.	20.09.2012	33-39
2	B	True copy of Raznama in R.C.C. No. 573 of 2002.	20.09.2012	40-42
3	C	True copy of application and order dated 08.01.2026 passed by the Chief Judicial Magistrate, Wardha.	08.01.2026	43-62



NAGPUR

COUNSEL FOR PETITIONER

DATED: 09.02.2026 (ADV. SAGAR KISHOR LAMBAT)

Reg.Cri. Case No. 573/2002

Exh. No. 258

Charge

I, D.H.Sharma, Chief Judicial Magistrate, Wardha do hereby charge you-

1. Sanjay s/o Hariram Agrawal, aged about 40 years, r/o Kusum Apartment Sector No.17, Washi, New Mumbai
2. Subodha s/o Chandradayal Bhandari aged about 47 years, r/o R.B.-703 G Govind Complex Sector-14 Washi, New Mumbai.
4. Nandkishor s/o Shankarlal Trivedi, aged about 45 years, r/o Vileparle, Mumbai.
5. Rajan s/o Chandrashekhar Salpekar, aged about 61 years, r/o Anurag Apartment, Laxminagar, Wardha.
6. Dilip s/o Narayanrao Kale, aged 64 years, r/o Civil Lines, Arvi.
7. Dhnyaneshwar s/o Ganpatrao Zalke, aged about 64 years, r/o Bachelor Road, Dhantoli, Wardha.
8. Madan s/o Babulalji Shrivastava, aged about 53 years, r/o Shivaji Ward, Hinganghat.
9. Vasantrao s/o Janardanrao Karlekar, aged about 76 years, r/o Nahadeopura, Wardha
11. Sau.Smitatai Vinayakrao Bhise, aged about 70 years, r/o Kelkarwadi Wardha.
12. Sharad s/o Bapuraoji Deshmukh, aged about 55 years, r/o Mhasala Sewagram Road, Wardha.
13. Kashinath s/o Daulatrao Parve, aged about 63 years, r/o Talegaon (Talatule), District Wardha.

Abated vide Exh. No. 797, Dt. 02/05/23 → 6

Abated vide Exh. No. 797, 798, 799, Dt. 12/10/2023 → 9

as follows-

That you accused no.1 Sanjay being a Director, accused no.2 Subodha being a Chartered Accountant, accused no.4 Nandkishor being an Executive Director of the Home Trade Ltd. Company, or about the month of April 2002, at Wardha in furtherance of your common intention cheated the Wardha District Central Co-operative Bank, Wardha, by dishonestly inducing it to invest the amount of Rs.25,24,72,083.33 through your company to get the Government security and as per your assurance the amount was delivered to



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Home Trade Ltd. by the said bank. But you neither invested the amount nor it was refunded to the bank, and thus you all thereby committed an offence punishable under section 420 r/w 34 of Indian Penal Code, and within my cognizance.

Secondly, that you accused no.5 Ranaj, accused no.6 Dilip, accused no.7 Dhnyaneshwar, accused no.8 Madan, accused no.9 Vasantao, accused no.11 Smt.Smitabai, accused no.12 Sharad and accused no.13 Kashinath being employees/office bearers of the Wardha District Central Co-operative Bank, Wardha on or about in the month of April 2002, at Wardha you all having dominion entrustment over the amount of Rs.25,24,72,083.33 of the Bank/public in your capacity as a public servant and you all in furtherance of your common intention committed criminal breach of trust in respect of the amount of 25,24,72,083.33 so entrusted, by not investing it without proper procedure and by violating the rules of the bank or by passing a resolution which was not on Agenda of meeting and thus dishonestly invested the said amount through Home Trade Ltd., and thereby committed an offence punishable under section 409 r/w 34 of Indian Penal Code, and within my cognizance.

Thirdly, that you accused no.1 Sanjay being a Director, accused no.2 Subodh being a Chartered Accountant, accused no.4 Nandkishor being an Executive Director of the Home Trade Ltd. Company, on or about in the month of April 2002 at above mentioned period and place in furtherance of your common intention converted it to your own use, the amount of Rs.25,24,72,083.33, entrusted with your company by the said bank for the purpose of investing through your company to get the Government security and as the company failed to invest or return to bank the said amount, you all committed criminal breach of trust which is an offence punishable under section 406 r/w 34 of Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried by me on the said charge.

Dated this 20th day of September, 2012


(D.H.Sharma)
Chief Judicial Magistrate,
Wardha, dt.20.09.2012

The above said charge is read over and explained to the accused persons in vernacular to which, they pleaded not guilty.


(D.H.Sharma)
Chief Judicial Magistrate,
Wardha, dt.20.09.2012



Te.


(Adv. S.K. Jambat)

Reg. Cri. Case No. 573/2002

Exh.No. 358

Charge

I, D.H. Sharma, Chief Judicial Magistrate, Wardha do hereby charge you –

1. Sanjay s/o Hariram Agrawal, aged About 40 years, r/o Kusum Apartment Sector No. 17, Washi, New Mumbai
2. Subodha s/o Chandradayal Bhandari Aged about 47 years, r/o R.B. – 703 G Govind Complex Sector-14 Washi, New Mumbai.
4. Nandkishor s/o Shankarlal Trivedi, Aged about 45 years, r/o Vileparle, Mumbai.
5. Rajan s/o Chandrashekhar Salpekar, Aged about 61 years, r/o Anurag Aprartment, Laxminagar, Wardha.
6. Dilip s/o Narayanrao Kale, Aged about 64 years, r/o Civil Lines, Arvi.
7. Dhyaneshwar s/o Ganpatrao Zalke, Aged about 64 years, r/o Bachelor Road, Dhantoli, Wardha.

8. Madan s/o Babulalji Shrivasa, aged About 53 years, r/o Shivaji Ward, Hinganghat.
9. Vasantao s/o Janardanrao Karlekar, Aged about 76 years, r/o Nahadeopura, Wardha.
11. Sau. Smitatai Vinayakrao Bhise Aged about 70 years r/o Kelkarwadi Wardha.
12. Sharad s/o Bapuraoji Deshmukh, Aged about 58 years, r/o Mhasala Sewagram Road, Wardha.
13. Kashinath s/o Daulatrao Parve, aged About 63 years, r/o Talegaon (Talutule), District Wardha.

as follows –

That you accused no.1 Sanjay being a Director, accused no.2 Subodha being a Chartered Accountant, accused no.4 Nandkishor being an Executive Director of the Home Trade Ltd. Company, or about the month of April 2002, at Wardha in furtherance of your common intention cheated the Wardha District Central Co-operative Bank, by dishonestly inducing it to

invest the amount of Rs.25,24,72,083.33 through your company to get the Government security and as per your assurance the amount was delivered to Home Trade Ltd. By the said bank. But you neither invested the amount nor it was refunded to the bank, and thus you all thereby committed an offence punishable under section 420 r/w 34 of Indian Penal Code, and within my cognizance.

Secondly, that you accused no.5 Ranaj, accused no.6 Dilip, accused no.7 Dhyaneshwar, accused no.8 Madan, accused no.9 Vasantao, accused no.11 Smt. Smitabai, accused no.12 Shared and accused no.13 Kashinath being employees/office bearers of the Wardha District Central Co-operative Bank, Wardha on or about in the month of April 2002, at Wardha you all having dominion entrustment over the amount of Rs.25,24,72,083.33 of the Bank/public in your capacity as a public servant and you all in furtherance of your common of 25,24,72,083.33 so entrusted, by not investing it without proper procedure and by violating the rules of the bank or by passing a resolution which was not on Agenda of meeting and thus dishonestly invested the said amount through Home Trade Ltd.,

and thereby committed an offence punishable under section 409 r/w 34 of Indian Penal Code, and within my cognizance.

Thirdly, that you accused no.1 Sanjay being a Director, accused no.2 Subodh being a Chartered Accountant, accused no. 4 Nandkishor being an Executive Director of the Home Trade Ltd. Company, on or about is the month of April 2002 at above mentioned it to your own use, the amount of Rs. 25,24,72,083.33 entrusted with your company by the said bank for the purpose of investing through your company to get the Government security and as the company failed to invest or return to bank the said amount, you all committed criminal breach of trust which is an offence punishable under section 406 r/w 34 of Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried by me on the said charge.

Dated this 20th day of September, 2012.

Sd/-

(D.H. Sharma)

Chief Judicial Magistrate,

Wardha, dt. 20.09.2012

The above said charge is read over and explained to the accused persons in vernacular to which, they pleaded not guilty.

Sd/-

(D.H. Sharma)

Chief Judicial Magistrate,

Wardha, dt. 20.09.2012

TC.

(Adv. S.K. Jadhav)

RCCNO 573/2002

शासन X संजय भगवान + 12

U/S 406, 409, 420 IPC

20/9/12

सरकारी वकील हजर आरोपी क्र. 1, 2 व 4 नं. व
व 11 व 13 हजर. नि 350 व 2 ओपरा पारिक

त्याचा प्रेरक मंडळ व जमागतीचा अर्जाबाबत
सर्व आरोपी व आरोप सिद्धीचा कायदागु भाळ
आरोपीची जबाबी जबाबदारी भाळ
कोबाद पुराणाच्या अर्थ (मंडळ) जबाबदारीबाबत
आरोपीचे साक्षदारांना समजवून घ्याव्यात
आणि प्रत्येक पुराणा करिता वेगवेगळे
आरोपी संजय भगवान यांना व्याख्यात
करून घ्यावे घ्यावे येणे रिमॉड वॉर
देण्यात भाळ प्रत्येक पुराणा करिता
तहक्या

Received
Copies
of the
documents

(N. C. TRIVEDI)
Acc No. 8/10/12

358-C
359 to 369-C
370, 371-D
20/9/12

8/10/12

सरकारी वकील हजर आरोपी क्र. 1 व 2
मंडळ आरोपी क्र 2 व 4 च्या पोबासपत्रा अर्ज (Subsidiary Affidavit)

372-A
374
B

असाव्यात ही पूर्व पत्रात देण्यात आलेली
2 व 4 च्या कोर्टाबाबतची साक्ष मिळवण्याबाबत
अर्ज दाखल (मंडळ) तसेच क्र 6, 7, 9 व 12
गोरक्षपिपी साक्षीचा अर्ज (मंडळ)

Shankar
20/9/12
(16) 10/12
आरोपी वॉर
मिचल

375-D

अशावेळी जमागतीचा पुराणा यांचा पुराणा
करिता पुढील आरोपी मिळवण्याबाबत अर्ज
(मंडळ) तसेच आरोपी वॉर वॉर

376-D

यांचा साक्ष देण्यात आल्याबाबत असाव्याबाबत

377-D

अर्ज दाखल (मंडळ) तसेच आरोपी वॉर वॉर

378-C

सिद्धी असाव्याबाबत साक्षी साक्ष नोंदविण्यात आले

379-C

साक्षीचा अर्ज यांचा अर्ज देण्यात आल्याबाबत असाव्याबाबत

380-C

(Seen & filed) इतर साक्षदारांना समजवून
घ्याव्यात याचा माळ अर्ज दाखल (मंडळ)

381-D

प्रत्येक पुराणा करिता तहक्या आरोपी क्र 11
यांना पुराणा करिता तहक्या आरोपी क्र 11

19/10/12

र.क.
(Adv. S.K. Jambhale)

State x Sanjay Agrawal +12

U/S 406,409,420 IPC

20.09.12 358-C 359 to 369-C 370,371-D	सरकारी वकील हजर, आरोपी क्र. १,२ व ४ ते ९ व ११ ते १३ हजर नि ३५० वर आदेश पारित त्याचा प्रोक्लॅमानशन व जमानतीचा अर्ज (नामंजूर) सर्व आरोपीवर आरोप निश्चित करण्यात आला. आरोपीची जबानी नोंदविण्यात आली. कागदपत्र दाखलचा अर्ज (मंजूर) दस्तऐवजाची यादी साक्षदारांना समन्स काढण्यात आले. प्रकरण पुराव्या करिता ठेवण्यात येते. आरोपी संजय अग्रवाल यांना न्यायालयीन कस्टडी मध्ये घेण्यात येते. रिमांड वॉरंट देण्यात आला. प्रकरण पुराव्या करिता तहकूब.	Received Copies of the documents sd/- (N.S. Trivedi) 8.10.2012
8.10.12 372 ते 374-D 375-D 376-D 377-D 378-C 379-C 380-C 381-D	सरकारी वकील हजर, आरोपी सर्व हजर फक्त आरोपी कं २ व ४ चे दोषारोपपत्र अपुरे असल्याने ते पूर्ण करून देण्यास (आदेश) २ व ४ चे गैरहजेरीची माफी मिळण्याबाबत अर्ज दाखल (मंजूर) तसेच कं ६,७, ९ व १२ चे गैरहजेरीची माफीचा अर्ज (मंजूर) साक्षीदार जगन्नाथ देशपांडे यांचा पुराव्या करिता पुढील तारीख मिळण्या बाबत अर्ज (मंजूर) तसेच साक्षीदार नारायण बोबडे यांचा साक्ष देण्यास असमर्थ असण्याबाबत अर्ज, दाखल साक्षदारांस डिस्चार्ज करण्याबाबत आले. सा. रामकृष्ण मरघाट मय्यत असल्यास रिपोर्ट (समन्स) सा. क. १ अभय कदम यांची साक्ष नोंदविण्यात आली सा. अभय यांचा उत्तर देण्यास समर्थ असण्याचा अर्ज (Seen & filed) इतर साक्षदारांना समन्स काढण्यात यावा	

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	<p>याबाबत अर्ज दाखल (मंजूर) प्रकरण पुरावा करिता तहकूब आरोपी क्र. 11 यांना परमनंत हजेरीतून सूट मिळण्याबाबत अर्ज दाखल.</p> <p>मु. न्या.</p>	<p>19.10.12</p>
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TC.

(A.D. S.K. Jadhav)

Annexure - C
567894

43

IN THE COURT OF HON'BLE CHIEF JUDICIAL MAGISTRATE,
WARDHA.

CRIMINAL APPLN. NO. OF 2025

In Reg. Cr. Case. No. 573/ 2002

APPLICANT: Sanjay Hariram Agarwal,
aged about 60 years, r/o 7 Hari Sava Street
Kidderpore, Kolkata - 700023.



-V/s-

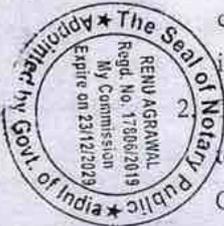
NON-APPLICANT: State of Maharashtra.
Through P.S.O. of P.S Wardha (City)
District: Wardha

APPLICATION U/S 216 OF THE CRIMINAL PROCEDURE CODE 1973 /
U/S 239 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023.

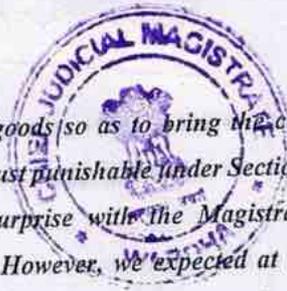
The applicant most humbly and respectfully submits as under;

1. The present application arises in a background where the trial from its very inception, has suffered from legal infirmities so fundamental that continuing the trial without rectification would amount to perpetuating a miscarriage of justice. The charges as framed are legally incompatible, the very nature of the dispute is civil and not criminal, and the accused was denied a proper opportunity to point out these defects before the charges were framed. The cumulative prejudice caused demands immediate judicial intervention.
2. That the Hon'ble Supreme Court, in a recent and strong disapproval of judicial approach towards criminal cases arising from commercial disputes, observed in M/s Shikhar Chemicals v. State of U.P., SLP (Crl.) No. 11445/2025, order dated 04.08.2025 [Annexure-A]:

"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

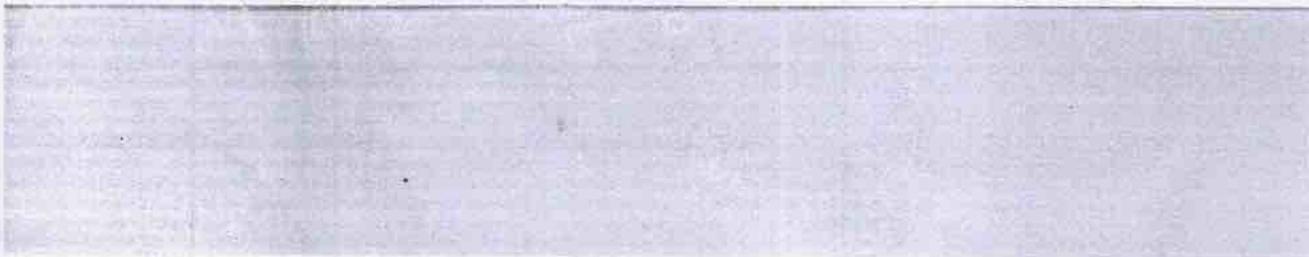
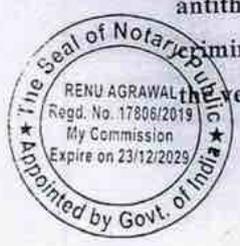


Received (07/7)
for ac. No 5 to 11
R
(P. Agrawal)
14/12/25



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."

- 3. That the present criminal proceedings arise out of a set of commercial transactions between M/s Home Trade Ltd. (hereinafter "HTL") and Wardha District Central Co-operative Bank (hereinafter "The Bank"), pertaining to purchase and sale of Government Securities during the year 2001-2002.
- 4. That the prosecution case as exhibited from the documents, in brief, is that there are a few Principal-to-Principal sale and purchase transactions between HTL and the Bank between 2001 to 2002. That in April 2002, allegedly two cheques issued by HTL to the sum of Rs. 28,03,27,270/- towards sale proceeds to the bank were dishonoured, which led to the lodging of FIR No. 110/2002 under Sections 406, 420 read with Section 34 of the Indian Penal Code, 1860.
- 5. That the Applicant herein was, at the relevant time, one of the directors of HTL. The gravamen of the allegations is limited to the said transactions and the alleged non-payment of amounts claimed to be allegedly due .
- 6. Through an order dated 20.09.2012, [Annexure-B] charges were framed against the Petitioner under Sections 406, 420 read with Section 34 of the IPC, along with other accused persons. The charges were framed without any pre-charge hearing under Section 239 CrPC as can be seen from the charge framing order and Roznama for that day [Annexure-C], and without affording the Applicant any opportunity to demonstrate that the allegations, even if taken at face value, do not make out the offences alleged.
- 7. That the charges framed on 20.09.2012 under Sections 406 and 420 IPC are legally antithetical and cannot co-exist, thereby violating the most basic principles 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.



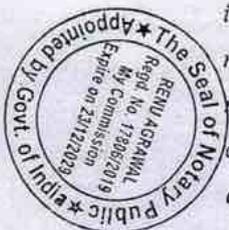
- 8. That Section 420 IPC requires proof of dishonest intention at the inception of the transaction, i.e., when inducing the delivery of property through deceit. Conversely, Section 406 IPC applies when property is lawfully entrusted to the accused, who subsequently develops a dishonest intention and misappropriates it. These two offences cannot arise from the same act or transaction as they are antithetical to each other.
- 9. That the Hon'ble Supreme Court has repeatedly and emphatically cautioned against such casual and legally untenable approach by courts. Recently, in *M/s Shikhar Chemicals v. State of U.P., SLP (Crl.) No. 11445/2025, order dated 04.08.2025, [Annexure-A]* the Court observed with concern:

"This very Bench in a very recent pronouncement in the case of "Delhi Race Club (1940) Ltd. and Others v. State of U.P. and Another", reported in (2024) 10 SCC 690 has exhaustively explained what constitutes criminal breach of trust. However, it appears that the judgment was not looked into so as to understand what constitutes criminal breach of trust punishable under Section 406 of the IPC."

- 10. In the said *Delhi Race Club Ltd. v. State of U.P. [(2024) 10 SCC 690]* [Annexure-D], the Supreme Court explicitly clarified this distinction, holding: *"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... Both the offences cannot co-exist simultaneously."* The Court further observed that

"Before we close this matter, we would like to say something as regards the casual approach of the courts below in cases like the one at hand. The Indian Penal Code (IPC) was the official Criminal Code in the Republic of India inherited from the British India after independence. The IPC came into force in the sub-continent during the British rule in 1862. The IPC remained in force for almost a period of 162 years until it was repealed and replaced by the Bharatiya Nyaya Sanhita ("BNS") in December 2023 which came into effect on 1st July 2024. It is indeed very sad to note that even after these many years, the courts have not been able to understand the fine distinction between criminal breach of trust and cheating.

When dealing with a private complaint, the law enjoins upon the magistrate a duty to meticulously examine the contents of the complaint so as to





determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from a FIR, this responsibility is of the police – to thoroughly ascertain whether the allegations levelled by the informant indeed falls under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for the police officers to routinely and mechanically proceed to register an 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 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."

11. Despite this well-settled legal position existing even before the *Delhi Race Club judgment*, the court framed charges under both Sections 406 and 420 IPC as co-existing. The failure to provide the accused an opportunity to be heard under Section 239 Cr.P.C. before framing these mutually exclusive charges exacerbated the prejudice caused. Had a hearing been granted, the accused could have highlighted the legal incongruity of the charges, potentially preventing this procedural error.

12. The framing of such antithetical charges 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. The concurrent framing of these incompatible charges, without affording the accused an opportunity to challenge them, constitutes a cumulative miscarriage and failure of justice, warranting the present application.

13. The charges were framed without any pre-charge hearing under Section 239 Cr.P.C, and without affording the Applicant any opportunity to demonstrate that the allegations, even if taken at face value, do not make out the offences alleged.



14. That the absence of a hearing was not a mere technicality but a substantive failure. In *Bharat Uttam Rajurkar & Ors. v. State of Maharashtra [Criminal Writ Petition No. 1232 of 2017, Bombay High Court (Nagpur Bench)] [Annexure-E]*, the court addressed a similar lapse where the trial court assumed compliance with Section 239 Cr.P.C. merely because the accused was represented by counsel. Justice S.B. Shukre, quashing the charges, held: “*There cannot be any 'prima facie presumption' about the predecessor of the learned Magistrate having heard the accused persons before framing of the charge... Framing of charge is a serious business. When Sections 239 and 240 of Cr.P.C. mandate that charge must be framed after giving an opportunity of hearing to the accused, the mandate must be followed realistically and not presumptively.*” The court in the above case further observed: “*The impugned orders clearly show that no such opportunity of being heard was ever granted to the petitioners before framing of the charge and, therefore, for this reason alone, the charge, as framed, against the petitioners deserves to be quashed and set aside.*” Thus, the failure to comply with Sections 239 and 240 Cr.P.C. has in itself resulted in a miscarriage of justice, warranting the present application.
15. **Even otherwise, the present dispute is civil in nature and has been given a criminal colour, amounting to an abuse of process of law.**
16. That a perusal of the prosecution's case, including the FIR, charge-sheet and the witness depositions, demonstrates that the underlying transactions were commercial in nature involving purchase and sale of Government Securities, settlement of trades, payment of interest, and issuance of cheques for amounts allegedly due.
17. The allegations, even if taken at their highest, at best make out a claim for recovery of money, which is enforceable through civil remedies and not through prosecution under the penal code.
18. That the Hon'ble Supreme Court has repeatedly cautioned that criminal law should not be used to settle scores in commercial disputes. Recently in *M/s Shikhar Chemicals v. State of U.P., SLP (Crl.) No. 11445/2025 [Annexure-A]*, order dated 04.08.2025, the Court strongly deprecated the practice of allowing prosecution of civil disputes under the guise of criminal charges. In this case, the complainant, a yarn trader, alleged that the accused's firm purchased yarn worth ₹52.34 lakhs, paid ₹47.75 lakhs, and failed to pay the balance of ₹4.59 lakhs. The complainant, instead of filing a civil recovery suit, lodged a private criminal complaint. The Magistrate, after inquiry under Section 202 Cr.P.C., took cognizance only under Section 406 IPC. The accused's





petition under Section 482 Cr.P.C. for quashing was rejected by the Allahabad High Court. The Hon'ble Supreme Court came down strongly on the High Court and the trial court for allowing a civil dispute to be prosecuted criminally. The Bench observed that:

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

"We are not taken by surprise with the Magistrate exhibiting complete ignorance of law as regards the position of law, as to what constitutes cheating punishable under Section 420 of the IPC and criminal breach of trust punishable under Section 406 of the IPC. However, we expected at least the High Court to understand the fine distinction between the two offences and the necessary ingredients to constitute the offence of cheating and criminal breach of trust. This very Bench in a very recent pronouncement in the case of "Delhi Race Club (1940) Ltd. and Others v. State of U.P. and Another", reported in (2024) 10 SCC 690 has exhaustively explained what constitutes criminal breach of trust. However, it appears that the judgment was not looked into so as to understand what constitutes criminal breach of trust punishable under Section 406 of the IPC." ...

"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. It was expected of the High Court to understand the nature of the allegations levelled in the complaint. In substance the High Court has said in so many words that the criminal proceedings instituted by the complainant in a case of pure civil dispute is justified because it may take considerable time for the complainant to recover



the balance amount by preferring a civil suit. In such circumstances referred to above we are left with no other option but to set aside the order of the High Court even without issuing notice to the respondents."

19. That in the present case, continuing the trial on the basis of allegations which, on their own showing, arise from a commercial dispute amounts to permitting the abuse of criminal process, contrary to the law laid down by the Hon'ble Supreme Court, and causes irreparable prejudice to the Applicant.
20. That this case is the very kind that the Hon'ble Supreme Court has repeatedly warned against, the casual framing of mutually exclusive charges, the criminalization of purely civil disputes, and the denial of fundamental procedural safeguards. Each of these infirmities, individually grave, have compounded towards serious and irreparable prejudice to the Applicant and has led to failure of justice.
21. That continuing with the present charges would perpetuate the abuse of criminal process and cause further irreparable prejudice to the Applicant. The matter requires immediate correction to prevent further miscarriage of justice.
22. The applicant craves leave to add, amend or modify the submissions including submission of additional documents if required.

PRAYER

In view of the above, it is most respectfully prayed that this Hon'ble Court may be pleased to

- a) Drop/alter the antithetical and unsustainable charges framed both under Sections 406 and 420 IPC; and
- b) Direct that the trial may recommence only after amending the charges in accordance with law, after affording an opportunity to the Applicant, keeping in view the binding precedents of the Hon'ble Supreme Court prohibiting the simultaneous framing of such mutually exclusive charges and the settled principle that purely civil disputes cannot be given a criminal colour; and

Pass such other and further orders as this Hon'ble Court may deem fit and proper in the interests of justice.



For the advocates for the Applicant

Dated this 12th day of August, 2025.

S. M. Anwar

For the Applicant



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SOLEMN AFFIRMATION

I SANJAY HARIRAM AGARWAL, aged about 60 years, Occupation: BUSINESS, residing at 7 Hari Sava Street, Kidderpore, Kolkata - 700025, above named Applicant do hereby state on solemn affirmation that the contents of above paras of affidavit are true and correct to my personal knowledge and belief and have been drafted by my counsel on my instruction and have been explained to me in vernacular and have been found to be true and correct. Hence verified and signed on this 12th Day of AUGUST, 2025 at Delhi.

12 AUG 2025

S. Harwal

DEPONENT

I know and identify the deponent

Akshay Garg
(ADVOCATE) 01/30/25/24
I identified the deponent who has signed in my presence

Certified That The Deponent
Shri / Smt. /KM : *Sanjay Harwal Agarwal*
S/o, W/o R.o.
I identified by Shri / Smt. Has Solemnly
affirmed before me a Delhi on as
St. No. *1113/2025* that the contents of the affidavit
Which have been read & explained to him are true
connect to his knowledge



ATTESTED
NOTARY PUBLIC
(INDIA)

12 AUG 2025

(Adv. S.K. Jambhale)

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



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R.C.C.No.573/2002 Order Exh.894

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

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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



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and 11 to 13 instead of filing reply filed a purnis 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.

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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 appellants 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, the

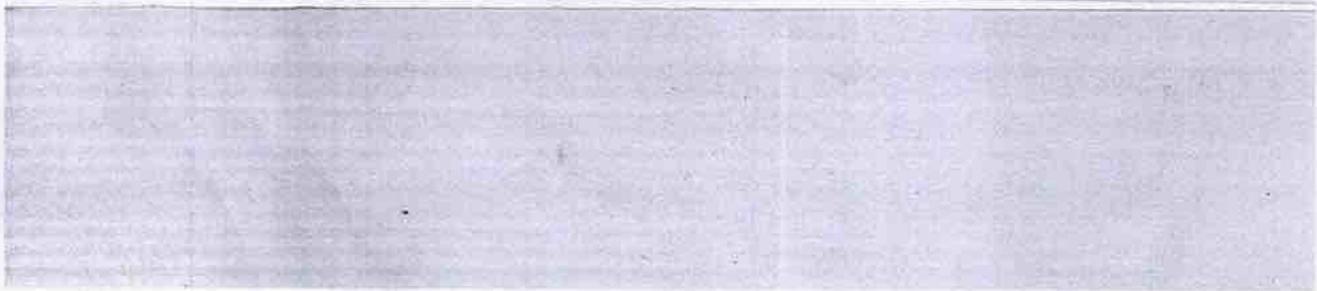


ratio laid down in the above citation in respect of theory of unpaid seller and dispute of civil nature is nowhere applicable to this case. Thus, the argument that the matter involves civil dispute and no criminal charge is made out against accused no. 1 is not acceptable.

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

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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.



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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.

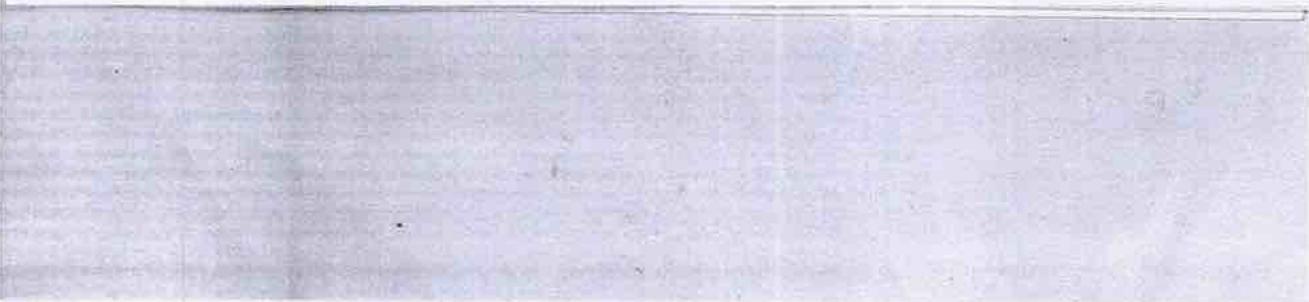
In order to constitute a criminal breach of trust (Section 406 IPC) :-

- 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;

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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



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opportunity of hearing. After hearing both the sides, the 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


 08.01.2020

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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-exit which needs recommencement of trial in this case. Thus, the application needs to be rejected. Hence, I pass the following order.

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ORDER

The application is rejected.

(Signature) 08.01.2026

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

Wardha
Date: 08.01.2026

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WARDHA

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(Adv. S.K. Jadhav)

05/02/2026