

IN THE HON'BLE HIGH COURT OF BOMBAY:
BOMBAY BENCH.

CRIMINAL ORIGINAL JURISDICTION
CRIMINAL WRIT PETITION NO. 4031 OF 2026

Sanjay Hariram Agarwal

...Petitioner

Versus

State of Maharashtra & Anr.

...Respondents

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Date 3rd February 2026

Mumbai

Mittal
Adv for Petitioner.



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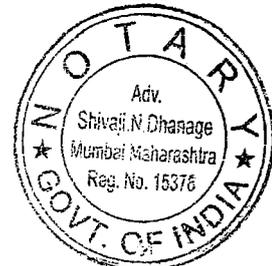
...Respondents

Challenge in brief -

The challenge in the present petition is to the learned Trial Court's refusal to decide a pending application under Section 216 Cr.P.C. prior to recording the statement of the Petitioner under Section 313 Cr.P.C., despite the application raising a foundational challenge to the legality of the unclear and mutually destructive charge itself, thereby causing serious prejudice and violating the Petitioner's right to a fair trial.

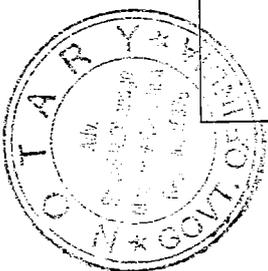
LIST OF DATES

Date	Particulars
2005	Case No. 200/PW/2005 instituted pursuant to investigation by EOW, CB, CID, against the Petitioner and other accused.
18.09.2023	Charges framed against the Petitioner under Sections 409, 465, 468, 471 read with Section



B

	120B, and Section 420 read with Section 34 of the Indian Penal Code.
23.09.2025	The Petitioner filed an application under Section 216 Cr.P.C. before the learned Trial Court seeking alteration / correction of the charge, pointing out the mutually exclusive and antithetical nature of charges under Sections 409 and 420 IPC.
	The said application under Section 216 Cr.P.C. remained pending; prosecution evidence came to be closed.
13.01.2026	The Petitioner filed an application requesting the learned Trial Court to decide the pending Section 216 Cr.P.C. application prior to recording the statement under Section 313 Cr.P.C., along with a pursis.
13.01.2026	By the order sheet dated 13.01.2026, the learned Trial Court adjourned the matter for recording of the statement of the accused under Section 313 Cr.P.C. and for the learned APP to file his say on the Petitioner's application under Section 216 Cr.P.C.
Present	Hence, the present Writ Petition seeking appropriate directions to decide the application under Section 216 Cr.P.C. prior to proceeding under Section 313 Cr.P.C.



POINTS TO BE URGED:-

- Whether the Ld. Magistrate was correct in simultaneous framing of charges under Sections 409 and 420 IPC on identical allegations is legally impermissible?
- When an application under Section 216 Cr.P.C. is pending consideration, proceeding to record the statement under Section 313 Cr.P.C. renders the statutory remedy illusory and defeats the purpose of pointing out a foundational defect in the charge?

ACTS TO BE REFERRED:

- i) Bharatiya Nagrik Suraksha Sanhita 2023,
- ii) Any other Act relevant at the time of argument.

AUTHORITIES TO BE CITED:

The Petitioner craves leave to and reserves the right to rely upon and cite appropriate judicial authorities during the course of hearing of the present Petition.

Place:

Date: 03/02/2026

Mittal
Advocate for Petitioner



IN THE HON'BLE HIGH COURT OF BOMBAY:
BOMBAY BENCH.

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. _____ OF 2026

In the matter of Article 226 of the
Constitution of India;

AND

In the matter of criminal
proceedings in CC No.
200/PW/2005 in the Court of Addl
Chief Metropolitan Magistrate,
47th Court, Esplanade Mumbai.



S. M. Arwal



IN THE HON'BLE HIGH COURT OF BOMBAY:
BOMBAY BENCH.

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200/PW/2005 in the Court of Addl
Chief Metropolitan Magistrate,
47th Court, Esplanade Mumbai.

S. H. M. M. M.

Sanjay Hariram Agarwal

Aged: 60 years, Occ.: Business

Add: 7, Hari Sava Street, Kidderpore,

Kolkata – 700023

...Petitioner

Versus

State of Maharashtra

...Respondent

TO,

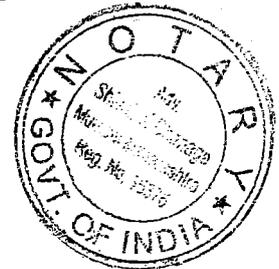
THE HON'BLE CHIEF JUSTICE AND OTHER HON'BLE
 PUISNE JUDGES OF THE HON'BLE HIGH COURT OF
 JUDICATURE AT BOMBAY.

HUMBLE PETITION OF THE
PETITIONER ABOVENAMED

MOST RESPECTFULLY SHOWETH:

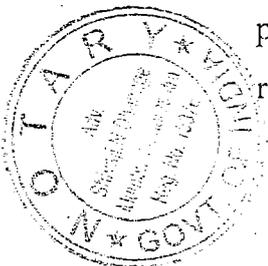
1. The Petitioner is constrained to approach this Hon'ble Court as the learned Trial Court, by deferring the adjudication of a pending application under Section 216 Cr.P.C. and insisting on recording the statement of the Petitioner under Section 313 Cr.P.C. first, has placed the Petitioner in a prejudicial position, thereby infringing the Petitioner's fundamental right to a fair trial guaranteed under Article 21 of the Constitution of India..

S. Hariram



BRIEF FACTS:

2. The Petitioner is Accused No. 2 in Case No. 200/PW/2005 pending before the Court of the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, arising out of an investigation by EOW, CB, CID.
3. Charges have been framed against the Petitioner, through an order dated 18.09.2023 u/s 409, 465, 468, 471 r/w 120B, and 420 r/w 34 of the Indian Penal Code.
4. On 23.09.2025, the Petitioner filed an application under Section 216 Cr.P.C. before the Trial Court seeking alteration / correction of the charge, specifically pointing out the antithetical and mutually exclusive nature of the offences alleged. The Petitioner in that application submits that the simultaneous framing of charges under Sections 409 and 420 IPC on identical allegations is legally impermissible, as both are antithetical as one offence postulates lawful entrustment, whereas the other postulates dishonest inducement at inception.
5. The said application was filed well before the stage of recording the statement of the accused under Section 313 Cr.P.C. The application demonstrates that unless the charge is clarified, the Petitioner does not know the precise case he is required to meet.
6. That while the said application was kept pending, the prosecution evidence has been closed, and the matter has reached the stage of Section 313 Cr.P.C.



S. Anand

7. On 13.01.2026, the Petitioner moved an application requesting the Trial Court to decide the pending Section 216 Cr.P.C. application prior to recording the statement under Section 313 Cr.P.C. Copy of the application dated 13.01.2026 filed by the petitioner in CC No. 200/PW/2005 in the Court of Addl Chief Metropolitan Magistrate, 47th Court, Esplanade Mumbai is annexed herewith and marked as EXHIBIT 'A'. Copy of the Pursis dated 13.01.2026 filed by the petitioner in CC No. 200/PW/2005 in the Court of Addl Chief Metropolitan Magistrate, 47th Court, Esplanade Mumbai is annexed herewith and marked as EXHIBIT 'B'.
8. The learned Public Prosecutor has not yet filed a say to the said application.
9. However, by the order sheet dated 13.01.2026, the learned Trial Court has adjourned the matter for recording the statement of the accused under Section 313 Cr.P.C. and for the learned APP to file his say on the Petitioner's application under Section 216 Cr.P.C. True copy of the order sheet dated 13.01.2026 in CC No. 200/PW/2005 in the Court of Addl Chief Metropolitan Magistrate, 47th Court, Esplanade Mumbai is annexed herewith and marked as EXHIBIT 'C'.
10. The Petitioner submits that while the learned Trial Court has formally called for the say of the learned APP on the application under Section 216 Cr.P.C., the matter has nonetheless been posted for recording of the statement

S. M. Wadhwa



under Section 313 Cr.P.C. on the next date, without first deciding the said application.

11. The effect of the aforesaid order is that the Petitioner is required to submit himself to examination under Section 313 Cr.P.C. notwithstanding the fact that the legality and correctness of the charge itself is under active consideration of the learned Trial Court.
12. The Petitioner respectfully submits that this approach compels him to answer questions on a charge which is ex facie illegal and internally contradictory, causing grave prejudice and violating his right to a fair trial.
13. Being left with no efficacious alternative remedy, the Petitioner is constrained to invoke the extraordinary jurisdiction of this Hon'ble Court.

GROUND:

- a. Because Section 216 Cr.P.C. empowers the Court to correct a defective or illegal charge "at any time before judgment", and when such defect goes to the root of the prosecution, it must necessarily be decided before compelling the accused to explain circumstances under Section 313 Cr.P.C.
- b. Because the purpose of Section 313 Cr.P.C. is to enable the accused to explain incriminating circumstances, which presupposes that the accused is aware of the precise nature of the offence alleged. Without deciding whether the case is one of



S. Anand

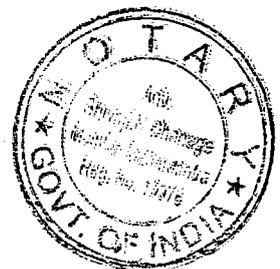
entrustment or cheating, the exercise under Section 313 becomes arbitrary and meaningless.

- c. Because compelling the Petitioner to answer questions on mutually destructive charges exposes him to irreparable prejudice and may force him to take self-incriminating stands.
- d. Because if the Section 216 application is ultimately allowed after recording the statement under Section 313 Cr.P.C., the entire exercise would have to be undertaken de novo, resulting in waste of judicial time and multiplicity of proceedings.
- e. Because the refusal to decide a pending application and the insistence on proceeding mechanically to the next stage amounts to failure to exercise jurisdiction vested in the Trial Court.
- f. Because keeping the petitioners application pending is violative of Articles 14 and 21 of the Constitution of India and defeats the guarantee of a fair and meaningful trial.

14. The Applicant submits that cases are pending before the Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai. That the present application is preferred under Article 226 of the Constitution of India. Thus, this Hon'ble Court has necessary jurisdiction to try, entertain and dispose of the present Application.

15. The Petitioner respectfully states and submits that the Petitioner has not filed any other Petition or SLP before the

S. M. Newson



Hon'ble Supreme Court or any other Court touching the subject matter of the present Petition.

16. The Applicant has paid the requisite court fees on this Application.

17. The Applicant will rely on documents, a list whereof is annexed hereto.

PRAYER

In the facts and circumstances aforesaid, it is most humbly prayed that this Hon'ble Court may be pleased to:

- A) Issue a writ of mandamus or any other appropriate writ, order or direction directing the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai to hear and decide the Petitioner's pending application under Section 216 of the Code of Criminal Procedure on its own merits before proceeding to record the statement of the Petitioner under Section 313 Cr.P.C.;
- B) Direct that the stage of recording the statement of the Petitioner under Section 313 Cr.P.C. in Case No. 200/PW/2005 be deferred until the disposal of the Petitioner's application under Section 216 Cr.P.C.;
- C) Pending the hearing and final disposal of the present petition, stay further proceedings insofar as the recording of the Petitioner's statement under Section 313 Cr.P.C. is concerned;
- D) pass such other and further orders as this Hon'ble Court may deem fit in the interest of justice.



S. K. [Signature]

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

Place:

Date: 03.02.2026

Mittal

Advocate for Petitioner

S. M. Koushal
(Petitioner)



VERIFICATION

I, Sanjay Hariram Agarwal, Aged: 60 years, Indian Inhabitant, Residing at: 7, Hari Sava Street, Kidderpore, Kolkata – 700023, the Petitioner 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)

Dated this 03rd day February, 2026)

S. Harwal
Petitioner

Identified by me



BEFORE ME

Mittal
Adv for petitioner

BEFORE ME

Shivaji N. Dhanage

Adv. Shivaji N. Dhanage
Notary Govt Of India
Regd. No. 15376 MUMBAI (MS),
404-405, 4th Floor, Davar House,
197/199, Near Central Camera Bldg
D.N. Road, For, Mumbai - 400001
Mob.: 8591897834

NOTED & REGISTERED

Page No. 108 Sr. No. 6477

Dated: 03 FEB 2026

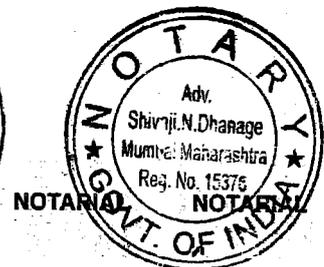
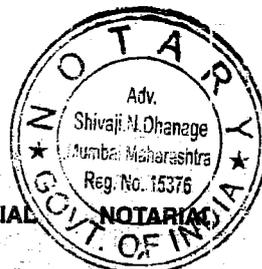
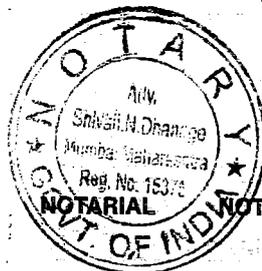
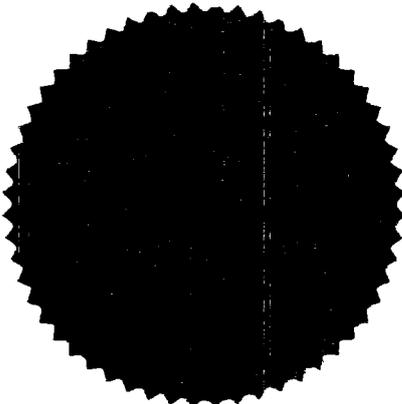


Exhibit - A

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

CRIMINAL APPLN. NO. OF 2025

IN CC No. 200/PW/2005

EX-D-185

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 Santacruz P.S

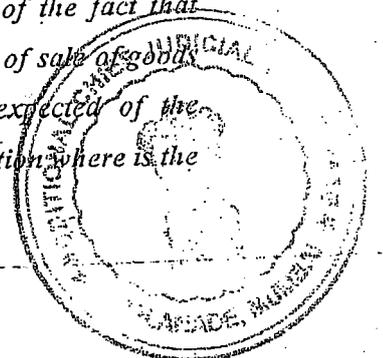
District: _____

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

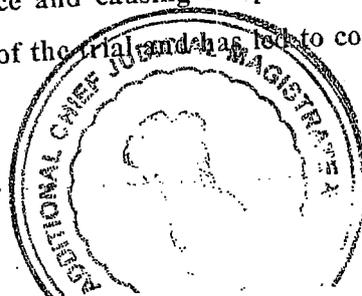


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23.09.25

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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."

3. The prosecution case, as exhibited from the FIR and charge-sheet, in brief, is that the complainant Trusts booked certain Government Securities with M/s. Giltedge Management Services Ltd. (hereinafter "GMSL") and made payments through. GMSL, in turn, is alleged to have booked the same securities with M/s. Home Trade Ltd. (hereinafter "HTL") and made corresponding payments, but the securities were not delivered. On this basis, FIR No. 298/04 dated 05.08.2004 was lodged at Santacruz Police Station under Sections 409, 420 read with 34 IPC.
4. The Applicant herein was, at the relevant time, a Director of HTL. It is significant that the FIR neither mentions any direct privity between the complainant and the applicant nor does it make any allegation of entrustment or inducement by him. The allegations are confined to commercial non-delivery between GMSL and the complainants, and between GMSL and HTL.
5. Despite this, in C.C. No. 200/PW/2005 pending before the Learned Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, through an order dated 18.09.2023, [Annexure-B] charges have been framed U/s 409, 465, 468, 471 r/w 120B, and 420 r/w 34. 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.
6. That the charges framed on 18.09.2023 under Sections 409 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.

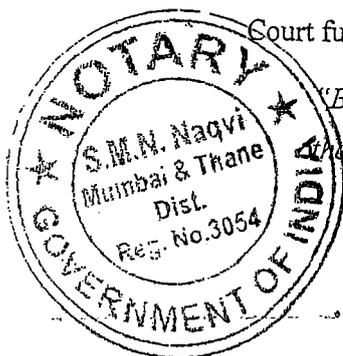


7. That Section 420 IPC requires proof of dishonest intention at the inception of the transaction, i.e., when inducing the delivery of property through deceit. Conversely, Section 409 IPC applies when property is lawfully entrusted to the accused, who subsequently develops a dishonest intention and misappropriates it. These two offences cannot arise from the same act or transaction as they are antithetical to each other.
8. Further, Section 409 IPC can be invoked only against a person who is a public servant, banker, merchant, agent, or someone acting in such a capacity entrusted with property. In the present case, no such relationship exists between the complainants and the Applicant. The Applicant, being a Director of HTL, never stood in any fiduciary or agency capacity vis-à-vis the complainants. Moreover, there is no privity of contract between the complainants and the Applicant. The complainants' dealings were exclusively with GMSL, and the Applicant or HTL was not a party to those transactions. The absence of entrustment or any qualifying relationship makes the very foundation of the charge under Section 409 IPC unsustainable.
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

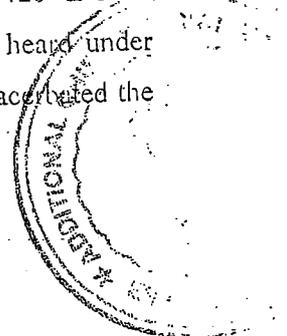
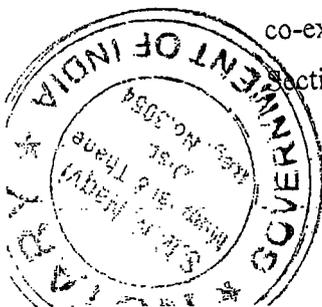


Indian Penal Code (IPC) was the official Criminal Code in the Republic of India inherited from the British India after independence. The IPC came into force in the sub-continent during the British rule in 1862. The IPC remained in force for almost a period of 162 years until it was repealed and replaced 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 his 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.

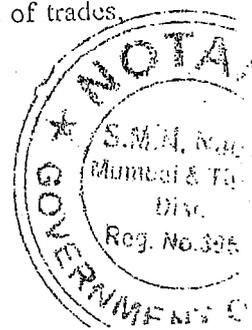
It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating viz-a-viz criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the 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 409 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 CrPC, 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.

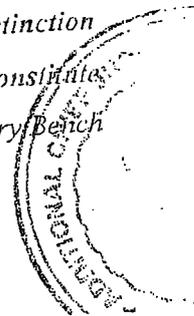
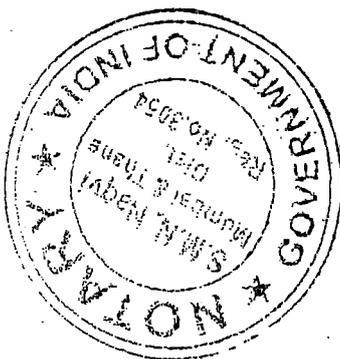


17. The allegations, even if taken at their highest, at best make out a claim for recovery of money, which is enforceable through civil remedies and not through prosecution under the penal code.

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 Nathalal" reported in 1968 (2) SCR 408, wherein this Court stated that a mere transaction of sale cannot amount to an entrustment." ...

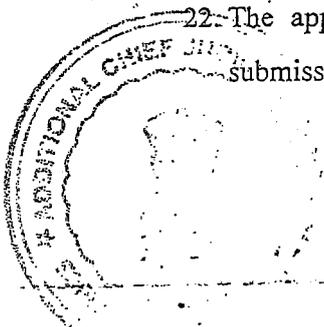
"We are not taken by surprise with the Magistrate exhibiting complete ignorance of law as regards the position of law, as to what constitutes cheating punishable under Section 420 of the IPC and criminal breach of trust punishable under Section 406 of the IPC. However, we expected at least the High Court 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 409 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.

Dated this 22nd day of September, 2025.

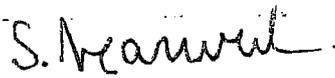
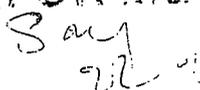

For the advocates for the Applicant

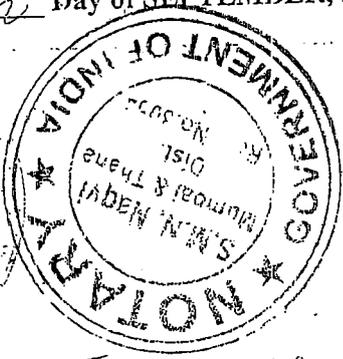
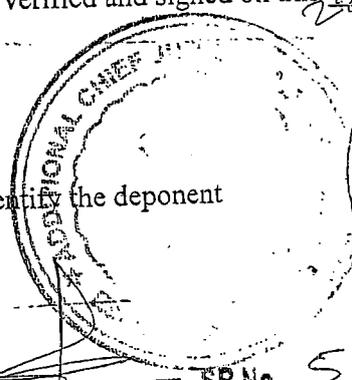

For the Applicant

SOLEMN AFFIRMATION

I SANJAY HARIRAM AGARWAL, aged about 60 years, Occupation: BUSINESS, residing at 7 Hari Sava Street, Kidderpore, Kolkata – 700023., 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 22nd Day of SEPTEMBER, 2025 at Delhi.

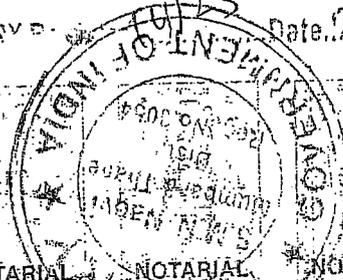
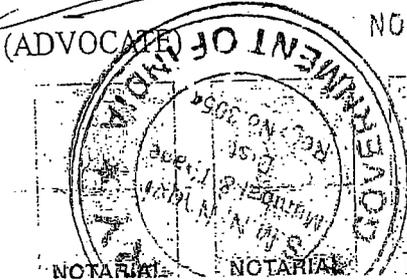
know and identify the deponent

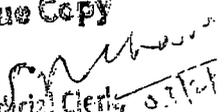

DEPONENT
BEFORE ME

S.M.N. NAQVI
NOTARY
Government of India
Mumbai & Thane Dist



SR No. 585 P No. 43

NOTARY = Full date 22/09/25



True Copy

Additional Chief Judicial Magistrate

19/09/25
19/09/25

IN THE COURT OF THE ADDL. CHIEF METROPOLITAN MAGISTRATE,
47TH COURT, ESPLANADE, MUMBAI
CASE NO. 200/PW/2005

E T D 192

STATE OF MAHARASHTRA
(THROUGH EOW, CB, CID).

... COMPLAINANT

VERSUS

KETAN KANTILAL SHETH & Ors.

... ACCUSED

PURSIS ON BEHALF OF ACCUSED NO. 2 (SANJAY AGARWAL)

MAY IT PLEASE YOUR HONOUR:

The Accused No. 2 above named most respectfully submits as under:

1. That the Accused No. 2 has filed an Application today praying that this Hon'ble Court be pleased to decide the pending Application under Section 216 of Cr.P.C. (Exhibit D-185) regarding alteration of charges prior to recording the statement of the accused under Section 313 of Cr.P.C.
2. The Hon'ble Court was pleased to call for the say of the Ld. Public Prosecutor on the said application. The Ld. PP has filed their reply to the same today.
3. It is submitted that the issue raised in the Section 216 Application goes to the root of the matter regarding the nature of the offence (mutually exclusive charges under Section 406 and 420 IPC). Until the charges are clarified/altered, the Accused is unable to offer his explanation or answer questions under Section 313 Cr.P.C. effectively, as he is not aware of the precise case he has to meet (whether entrustment or cheating).

0
filed
13/11/2026

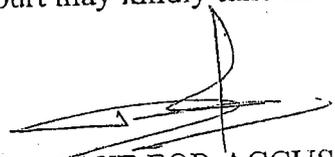


4. In view of the above, the Accused No. 2 is not in a position to record his statement under Section 313 Cr.P.C. today.

5. It is therefore requested that this Hon'ble Court may kindly take note of this.

PLACE: MUMBAI

DATED: 13/01/2026


ADVOCATE FOR ACCUSED NO. 2

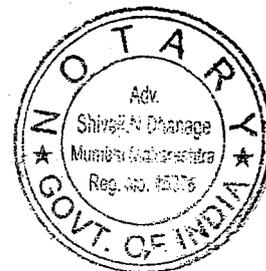


True Copy

Shivaji
Judicial Clerk, 03/01/26

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

Approved on _____
Granted on 13/01/2026
Recd. on _____
Delivery on 03/01/2026



Metropolitan Magistrate, Esplanade Court, Mumbai

In The Court Of : Addl. Chief Judicial Magistrate, 47th Court

CNR Number : MHMM110049802005

Case Number : Police cases PW/1900200/2005

Date : 13-01-2026

EW CB CID Versus KETAN KANTILAL SHETH

Daily Status

Business	Next Purpose	Next Hearing Date
Ld. APP is Present. Accused no.1,2,3,4 are present. Ld. Advocate are present. Ex-D-191- Ld. Advocate of accused no. 2 filed application to decide the pending application u/sec. 216 Cr.P.c. (Ex-185). O- APP to say. Ld. APP filed say. Ex-D-192- Ld. Advocate of accused no. 2 filed pursis regarding 313 statement not recoded today. Adj for APP to say on Ex-D-185(u/sec 216 Cr.Pc./ 239 of BNSS)/ 313 Statement.	STATEMENT 313 Cr.P.C. AT 2.45PM.	03-02- 2026



I am not a member of the Advocate welfare fund and therefore a stamp of Rs.2 is not annexed herewith.

Mittal
Advocate for Petitioner

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. OF 2026**

Sanjay Hariram Agrawal,
Age 58 years, Occu: Business,
An adult, Indian Inhabitant,
Residing at 7 Hari Sava Street,
Kidderpore, Kolkata, 700023

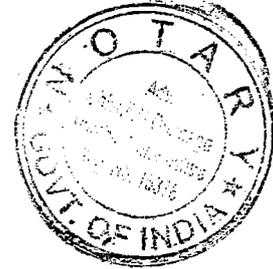
... Petitioner

Versus

The State of Maharashtra,
Through the Public Prosecutor Office ... Respondent

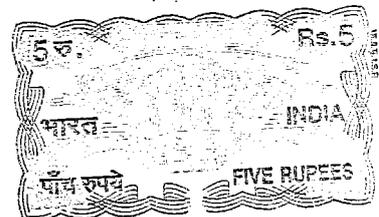
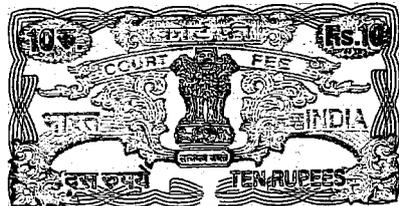
To,
The Registrar
High Court Appellate Side,
Bombay.

VAKALATANAMA



Sir,

I, Sanjay Hariram Agarwal, the Petitioner, do hereby appoint Mr. Mittal Munoth and Miss. Anushka Jain Advocates, having his office at C/o Office no. 506, 5th floor, Hamam House, Ambalal Doshi Marg, Fort, Mumbai -- 400001, to act, appear and plead my behalf in the above matter.



IN WITNESS WHEREOF, we have set and subscribed our
hand to this writing at Mumbai.

Dated this ²¹03 Day of February, 2025

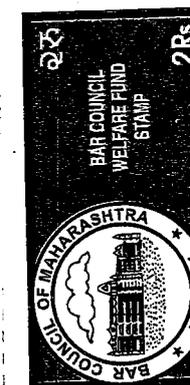
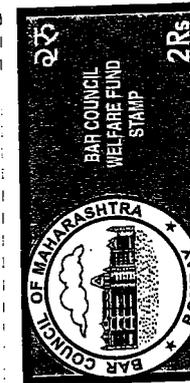
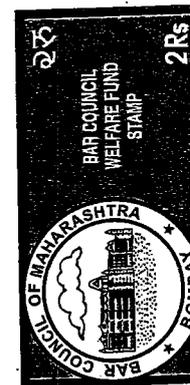
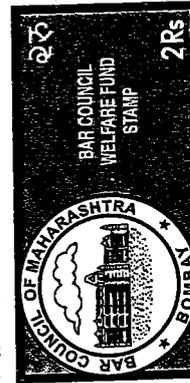
Accepted:

Mittal *Anushka*

Mittal Munoth & Anushka Jain
Advocate for Petitioner,
C/o Office no. 506, 5th floor,
Hamam House, Ambalal Doshi Marg,
Fort, Mumbai – 400 001
Mob No.9967040011
Email id: mittalmunoth@gmail.com
MAH No. MAH/6332/2018

S. M. Arsal
Petitioner





23

IN THE HIGH COURT OF
JUDICATURE AT BOMBAY
CRIMINAL APPELLATE
JURISDICTION

CRIMINAL WRIT PETITION NO. OF 2026

Sanjay Hariram Agarwal ...Petitioner

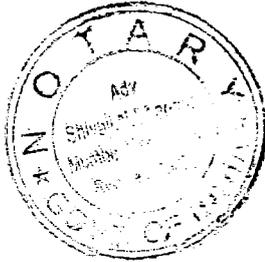
Versus

The State of Maharashtra
...Respondent

CRIMINAL APPLICATION

Dated __ day of February, 2026

03 FEB 2026



Mittal Munoth & Anushka Jain
Advocate for Applicant,
C/o Office no. 506, 5th floor.
Hamam House, Ambalal Doshi
Marg, Fort, Mumbai - 400 001
Mob No.9967040011
Email id: mittalmunoth@gmail.com
MAH No. 6332/2018

IN THE HIGH COURT OF
JUDICATURE AT BOMBAY
CRIMINAL APPELLATE
JURISDICTION

CRIMINAL WRIT PETITION NO. OF 2026

Sanjay Hariram Agarwal ...Petitioner

Versus

The State of Maharashtra
...Respondent

CRIMINAL APPLICATION

Dated ___ day of February, 2026

03 FEB 2026



Mittal Munoth & Anushka Jain

Advocate for Applicant,

C/o Office no. 506, 5th floor.

Hamam House, Ambalal Doshi

Marg, Fort, Mumbai -- 400 001

Mob No. 9967040011

Email id: mittalmunoth@gmail.com

MAH No. 6332/2018