

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :

NAGPUR BENCH : NAGPUR.

REVISION PETITION NO. OF 2026

In the matter of:

Sanjay Hariram Agarwal,

aged about __ years, r/o Kusum Apartment

Sector No.17, Washi, New Mumbai

...**PETITIONER**

v.

State of Maharashtra.

...**RESPONDENT**

TO,

THE HONOURABLE CHIEF JUSTICE AND HIS
LORDSHIP'S COMPANION JUDGES OF THIS
HONOURABLE HIGH COURT OF JUDICATURE
AT BOMBAY: NAGPUR BENCH.

**[CRIMINAL REVISION PETITION UNDER SECTIONS 397 AND 401 OF
THE CODE OF CRIMINAL PROCEDURE, 1973, CHALLENGING THE
ORDER DATED 13.01.2026 PASSED BY THE LEARNED ADDITIONAL
CHIEF JUDICIAL MAGISTRATE, 47TH COURT, ESPLANADE, MUMBAI,
IN CASE NO. 255 OF 2023, WHEREBY THE PETITIONER'S APPLICATION
FOR DISCHARGE CAME TO BE REJECTED]**

THE HUMBLE PETITION OF THE PETITIONER ABOVENAMED:

1. The Petitioner is Accused No. 1 in Case No. 255 of 2023 pending before the Court of the Learned Additional Chief Judicial Magistrate, 47th Court, Esplanade, Mumbai, arising out of FIR No. 65 of 2002 registered with Vishrambag Police Station, Pune. The present Criminal Revision Petition is preferred under Sections 397 and 401 of the Code of Criminal Procedure, 1973, challenging the order dated 13.01.2026 passed by

the Learned Additional Chief Judicial Magistrate, whereby the Petitioner's application for discharge came to be rejected.

2. At the relevant time, the Petitioner was one of the Directors of Home Trade Limited, a company registered with the Securities and Exchange Board of India and a recognised member of the Bombay Stock Exchange, National Stock Exchange and Pune Stock Exchange. Home Trade Limited was also registered with the Reserve Bank of India for dealing in Government Securities under Registration No. 6-11/82. The company was engaged in lawful trading of Government Securities through recognised exchanges, and the transactions in question were undertaken in the ordinary course of its business.
3. The first informant before the Police was Dadabhau Niloba Kale, Special Auditor of Co-operative Societies (Class-II), Co-operative Bank, Pune. It is alleged that when he inspected the Suvarnayug Sahakari bank [Hereinafter "the bank"] and conducted an audit, he found that there were 14 investments of the Bank in Government Bonds at the end of 31.03.2002 and out of which 13 investments were found to be appropriate and in consonance with the directives issued by the Reserve Bank of India.
4. It was further alleged that the Bank had invested a sum of Rs. 5.65 Crores in GOI-2010 (PHY) Government Securities carrying interest at 7.50%, and that such investment was not found during inspection. According to the prosecution version, the Bank had entrusted certain Government Bonds of Maharashtra Jeevan Pradhikaran to Home Trade Limited for sale and for reinvestment of the proceeds in Government Securities of the year 2017 carrying interest at 8.07%. Though Home Trade Limited executed contract notes in respect of the transaction, it was alleged that the said amount was not invested in Government Securities and that the securities were not delivered to the Bank.
5. On the basis of the aforesaid allegations, the Petitioner filed an application seeking discharge. By order dated 13.01.2026, the Learned Additional Chief Judicial Magistrate dismissed the said discharge application. [**Annexure A-1**].
6. Being aggrieved by the impugned order, and in view of the facts and circumstances of the case and the material placed on record, the Petitioner submits that the continuation of the criminal proceedings against him is wholly unwarranted in law. The allegations, even if taken at their face value, do not disclose the commission of any offence by the Petitioner. The impugned order therefore deserves to be quashed and the petitioner should be discharged on the following, amongst other, grounds:

7. GROUNDS:

FAILURE TO CONSIDER THAT THE PROSECUTION ITSELF DISCLOSES A PURELY CONTRACTUAL AND COMMERCIAL DISPUTE, BASED ON ONE ALLEGEDLY UNHONOURED TRANSACTION OUT OF FOURTEEN, AND DOES NOT DISCLOSE ANY CRIMINALITY

A. It is respectfully submitted that the Learned Magistrate has failed to consider the submission of the Applicant that the present proceedings are a clear instance of an attempt to criminalise what is, at its very nature, a contractual and commercial dispute between two corporate entities.

A.1. The allegations, even if taken at their highest as set out in the complaint and charge-sheet, relate only to alleged non-delivery of Government of India Securities and an alleged consequent financial liability. Such allegations squarely fall within the realm of civil law remedies arising out of alleged contractual non-performance and do not, by themselves, disclose any independent criminal intent, dishonest inducement, or misappropriation so as to justify invocation of penal provisions.

A.2. The complaint and the prosecution narrative itself proceed on the footing that the Bank had undertaken fourteen investment transactions in Government Securities during the relevant period. It is part of the complaint forming the basis of the FIR that out of these fourteen transactions, thirteen transactions were found to be proper, and that the grievance of the complainant is confined only to one transaction in which the securities were allegedly not delivered.

A.3. The Learned Magistrate has noticed this factual position while narrating the prosecution case, yet has failed to consider its legal consequence. The impugned order does not explain how, when the prosecution version itself limits the alleged irregularity to a single transaction out of fourteen, a conclusion of “strong suspicion” of criminality can be sustained, particularly in a series of successful transactions followed by one unsuccessful transaction.

A.4. It was specifically submitted before the Learned Magistrate that the complainant itself has treated the alleged liability as a civil and commercial one by invoking appropriate civil remedies. The Bank has instituted Arbitration Case No. 272 of 2002 against Home Trade Ltd., which culminated in an Award dated 08.04.2003 directing payment of Rs. 6,09,68,023/- together with interest at 14% per annum from 4th July 2002 till realisation, along with costs. In addition thereto, the Bank has also instituted Special Civil Suit No. 752 of 2002 before the Court of Civil Judge, Senior Division, Pune, seeking recovery of the same amount.

A.5. The submission that once the complainant has itself chosen to treat the transaction as a civil/commercial liability capable of adjudication before civil fora, the continuation of a parallel criminal prosecution on the same set of facts is impermissible and amounts to abuse of process, was squarely raised in the discharge application. The impugned order, however, does not record this submission nor does it assign any reasons whatsoever for rejecting it.

A.6. There is no discussion in the impugned order as to how, despite the existence of arbitral and civil proceedings arising out of the same transaction, the allegations could still be construed as constituting criminal offences. The Learned Magistrate has failed to examine whether the essential ingredients of any penal provision are made out, and has instead proceeded on broad and vague observations regarding the seriousness of allegations.

A.7. It was further specifically contended that there is not a single material in the charge-sheet to suggest any fraudulent intent at the inception of the transaction, any entrustment being misused, or any dishonest inducement attributable to the Applicant. Mere non-fulfilment of contractual obligations or an alleged financial loss cannot, by itself, give rise to offences of cheating or criminal breach of trust. The Learned Magistrate has neither dealt with this submission nor given any reasoning as to why such absence of foundational criminal ingredients does not render the charge groundless.

A.8. The Hon'ble Supreme Court has repeatedly deprecated the growing tendency to give criminal colour to civil disputes and has held that criminal proceedings cannot be permitted to be used as a tool for recovery of money or to exert pressure in commercial transactions.

A.9. In *M/s Shikhar Chemicals v. State of U.P., 2025 SCC OnLine SC 1643*, the Apex Court has observed:

“The Magistrate unfortunately remained unmindful of the fact that even as per the complainant’s own say the case is one of sale of goods and recovery of some balance amount... It was expected of the Additional CJM to know that in a case of sale transaction where is the question of any entrustment of goods so as to bring the case within the ambit of criminal breach of trust punishable under Section 406 of the IPC. ... We are not taken by surprise with the Magistrate exhibiting complete ignorance of law... However, we expected at least the High Court to understand the fine distinction between the two offences... It was expected of the High Court to know the well-settled position of law that in cases of civil dispute a complainant cannot be permitted to resort to criminal proceedings as the same would amount to abuse of process of law.”

A.10. Despite specific reliance placed on binding precedent in this regard, the impugned order is completely silent on the applicability of this settled legal position. In the present case, the complainant having already invoked civil and arbitral remedies in respect of the very same transaction, the continuation of criminal proceedings is clearly motivated, vexatious and an abuse of the process of law. The failure of the Learned Magistrate to consider and adjudicate upon this foundational issue renders the impugned order vitiated by non-application of mind and material irregularity.

A.11. On this ground alone, the impugned order rejecting the Applicant’s discharge application is unsustainable in law and deserves to be quashed and set aside.

FAILURE TO CONSIDER AND APPLY THE SETTLED LAW THAT IN THE ABSENCE OF ENTRUSTMENT OR DOMINION OVER PROPERTY, NO OFFENCE OF CRIMINAL BREACH OF TRUST UNDER SECTIONS 406 OR 409 IPC IS MADE OUT

B. It is respectfully submitted that the Learned Magistrate has failed to consider and adjudicate upon the specific submission of the Applicant that the essential and indispensable ingredients of the offence of criminal breach of trust under Sections 406 and 409 of the Indian Penal Code are wholly absent in the present case.

B.1. It was specifically pointed out in the discharge application that in order to constitute an offence of criminal breach of trust, the ingredients of Section 405 IPC must be satisfied, the foremost requirement being entrustment of property or dominion over property.

B.2. Section 405 of IPC reads 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".”

B.3. As delineated by the Hon’ble Supreme Court in ***Delhi Race Club Ltd. v. State of U.P. [(2024) 10 SCC 690]*** the following are the ingredients of Section 406 IPC:

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

1) There must be entrustment with person for property or dominion over the property, and

2) The person entrusted: -

a) dishonestly misappropriated or converted property to his own use, or

b) dishonestly used or disposed of the property or 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”

B.4. The very foundation of the offence of criminal breach of trust lies in entrustment of property or dominion over property. Unless such entrustment exists, no offence under Sections 406 or 409 IPC can arise.

B.5. The Learned Magistrate has failed to examine whether the prosecution material discloses any entrustment of property to the Applicant. There is not even an allegation, much less material, to suggest that the Applicant had any personal knowledge of, involvement in, or dominion over the alleged transaction, or that any property of the complainant Bank was ever entrusted to him in his personal capacity.

B.6. Even with respect to Home Trade Ltd., the allegations in the charge-sheet pertain to a commercial transaction between the Bank and the company, wherein the Bank claims that Government of India Securities worth ₹5,65,00,000/- were not delivered. The prosecution material itself indicates that the transaction was undertaken as a commercial dealing between two independent contracting parties, and not in the nature of any fiduciary or agency relationship involving entrustment.

B.7. It was specifically submitted that the concept of entrustment does not extend to ordinary commercial or sale transactions. In this regard, reliance was placed on the judgment of the Hon'ble Supreme Court in ***Delhi Race Club Ltd. v. State of U.P.***, wherein the Court has lucidly held as follows

“From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to

the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it.”

B.8. The Hon’ble Supreme Court in *M/s Shikhar Chemicals v. State of U.P., 2025 SCC OnLine SC 1643*, has reiterated that a commercial or sale transaction cannot amount to entrustment so as to attract criminal breach of trust. The Court observed:

“It was expected of the Additional CJM to know that in a case of sale transaction where is the question of any entrustment of goods so as to bring the case within the ambit of criminal breach of trust punishable under Section 406 IPC. This position of law came to be explained by this Court almost six decades back in the landmark decision titled ‘State of Gujarat v. Jaswantlal Nathalal’, 1968 (2) SCR 408, wherein this Court stated that a mere transaction of sale cannot amount to an entrustment.”

B.9. In absence of such entrustment or dominion, the first and indispensable ingredient of Sections 406 and 409 IPC collapses against the applicant. Without a fiduciary relationship or personal custody of another’s property, no offence of criminal breach of trust can arise in law.

B.10. In the present case, there is not a single material to suggest that any property was ever entrusted to the Petitioner in his personal capacity, or that he exercised dominion over any property of the Bank. The allegation, even if assumed as true, pertains only to non-performance of a commercial obligation by the Company, for which civil remedies already stand invoked by the Bank before appropriate fora.

B.11. The impugned order does not deal with these submissions at all. The failure of the Learned Magistrate to consider this foundational requirement, and to assign reasons for rejecting the Applicant’s submission on this aspect, renders the impugned order vitiated by non-application of mind and material irregularity. The continuation of prosecution for criminal breach of trust in such circumstances is legally unsustainable and warrants interference by this Hon’ble Court.

FAILURE TO CONSIDER AND APPLY THE SETTLED LAW THAT THE ESSENTIAL INGREDIENTS OF THE OFFENCE OF CHEATING UNDER SECTION 420 IPC ARE NOT DISCLOSED

C. It is respectfully submitted that the Learned Magistrate has failed to consider and adjudicate upon the specific submission raised by the Applicant that, even if the allegations contained in the charge-sheet are accepted in their entirety, the essential ingredients of the offence of cheating punishable under Section 420 of the Indian Penal Code are not disclosed.

C.1. That 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’.”

C.2. 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”*

C.3. It was further submitted that a subsequent failure to fulfil a promise, or inability to perform a contract, does not by itself constitute the offence of cheating.

C.4. The Learned Magistrate has neither analysed these statutory requirements nor examined whether the prosecution material satisfies any of these essential ingredients. The impugned order does not record any finding as to what was the alleged false representation, who made

such representation, when it was made, or how the complainant was deceived at the inception of the transaction.

C.5. Applying the settled legal principles to the prosecution version itself, it was specifically submitted that the allegations disclose, at best, that the Bank entered into a commercial investment transaction with Home Trade Ltd. for purchase of Government Securities and that the transaction did not culminate in delivery. There is no allegation that Home Trade Ltd., much less the Applicant in his personal capacity, made any representation known to be false at the inception of the transaction, or that the Bank was induced to part with its money by deception or misrepresentation.

C.6. Even with respect to Home Trade Ltd., the material on record does not disclose any allegation that the company possessed dishonest intention at the inception of the transaction. The charge-sheet proceeds solely on the footing of alleged non-performance and resultant financial loss, which cannot retrospectively import mens rea or deception so as to attract Section 420 IPC.

C.7. In *Anil Mahajan v. Bhor Industries Ltd.*, (2005) 10 SCC 228, the Hon'ble Supreme Court held that criminal proceedings for cheating are liable to be quashed where the allegations disclose only a civil wrong, observing that "*the substance of the complaint is to be seen; if it discloses a civil dispute, the criminal process should not be permitted to continue.*" The present case falls squarely within that principle. The impugned order does not consider this submission nor does it provide any reasoning as to why this principle would not apply to the facts of the present case.

C.8. The Learned Magistrate has merely proceeded on a vague and general observation of "strong suspicion" without undertaking the mandatory exercise of testing the prosecution allegations against the essential ingredients of the offence of cheating. Such an approach amounts to a material irregularity and a failure to exercise jurisdiction in accordance with law.

C.9. Even taking the prosecution case at its highest, the allegations disclose, at best, a breach of contractual obligations arising out of a

commercial transaction. The failure of the Learned Magistrate to consider these submissions and to record reasons for rejecting them renders the impugned order vitiated by non-application of mind. The continuation of criminal proceedings for cheating in such circumstances amounts to a misuse of the criminal process and warrants interference by this Hon'ble Court.

ERRONEOUS AND IMPERMISSIBLE RECOURSE TO SECTION 221 CRPC TO SUSTAIN MUTUALLY DESTRUCTIVE CHARGES UNDER SECTIONS 406 AND 420 IPC

D. It is respectfully submitted that the Learned Magistrate has committed a serious error of law in invoking Section 221 of the Code of Criminal Procedure to sustain charges under Sections 406 and 420 of the Indian Penal Code, despite expressly recognising that the two offences are distinct, antithetical, and cannot run together.

D.1. 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 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”

D.2. 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.

D.3. 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”

D.4. 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.

D.5. 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 406IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 IPC, punishable under Section 420 IPC.

...

41. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be

judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence.

42. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept.

*43. There is a distinction between criminal breach of trust and cheating. **For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.***

D.6. 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.”

D.7. This proposition of law has been furthered in *Arshad Neyaz Khan v. State of Jharkhand, 2025 SCC OnLine SC 2058*.

D.8. The Learned Magistrate has correctly noted, relying on the judgment of the Hon'ble Supreme Court in *Delhi Race Club Ltd. v. State of U.P.*, that the offences of criminal breach of trust under Section 406 IPC and cheating under Section 420 IPC require completely different and mutually exclusive ingredients, and that the accused has to be discharged of either one of the offences.

D.9. Having so held, the Learned Magistrate has nevertheless proceeded to take recourse to Section 221 CrPC on the premise that there exists a “doubt” as to which of the offences is made out, and that alternate charges can therefore be framed. This approach is legally impermissible and proceeds on a fundamental misunderstanding of the scope and purpose of Section 221 CrPC.

D.10. Section 221 CrPC is an exception to the general rule under Section 218 CrPC and is attracted only where, on the same set of facts, there exists a genuine doubt as to which of several offences the facts, if proved, would constitute. The provision cannot be invoked to keep alive charges which are mutually destructive in law.

D.11. The offences under Sections 406 and 420 IPC do not present a case of factual ambiguity but one of legal incompatibility. Section 420 IPC requires dishonest intention at the inception of the transaction, whereas Section 406 IPC postulates lawful entrustment followed by subsequent dishonest misappropriation. Acceptance of one necessarily negates the other. There is no factual overlap that can give rise to a legitimate doubt as contemplated under Section 221 CrPC.

D.12. In such a situation, whether the charges are framed conjunctively (“and”) or alternatively (“or”), the effect remains the same: the accused is called upon to answer two legally irreconcilable accusations founded on contradictory mental states. Section 221 CrPC

cannot be employed to compel an accused to face inconsistent legal hypotheses which cannot coexist.

D.13. The Hon'ble Supreme Court in *Delhi Race Club Ltd. v. State of U.P.* has held that offences under Sections 406 and 420 IPC are antithetical and cannot coexist simultaneously in the same set of facts. The Court has further clarified that these provisions are not "twins" and cannot be treated as interchangeable or survivable through procedural devices.

D.14. Once the Court itself finds that the two offences cannot run together, the only legally permissible course is to determine which offence, if any, is prima facie made out and to discharge the accused of the other. Resort to Section 221 CrPC in such circumstances amounts to an abdication of judicial duty and a distortion of the statutory scheme.

D.15. The invocation of Section 221 CrPC in the present case does not cure the illegality arising from framing antithetical charges; rather, it perpetuates it. Section 221 cannot be used as a fallback mechanism to sustain charges which are mutually exclusive in law.

D.16. The Learned Magistrate has thus committed a material irregularity in taking recourse of Section 221 CrPC to maintain charges under Sections 406 and 420 IPC despite acknowledging their incompatibility. The impugned order, to that extent, suffers from a patent error of law and is liable to be quashed and set aside.

D.17. The continuation of prosecution on the basis of such antithetical charges, whether framed conjunctively or alternatively, causes inherent and irreparable prejudice to the Applicant, undermines the fairness of the trial, and violates the guarantee of fair procedure under Articles 14 and 21 of the Constitution.

ERRONEOUS REJECTION OF THE SUBMISSION RELATING TO FORGERY BY EVADING THE STATUTORY TEST UNDER SECTIONS 463 AND 464 IPC AND BY IMPROPERLY SHIFTING THE ENQUIRY TO SECTION 109 IPC.

E. It is respectfully submitted that the Learned Magistrate has failed to apply the mandatory statutory requirements governing offences of forgery under Sections 465, 468 and 471 of the Indian Penal Code, and has rejected the Applicant's submission on this aspect on wholly untenable and vague reasoning.

E.1. It was specifically pointed out that in order to attract any of the offences relating to forgery, the foundational requirements of Sections 463 and 464 IPC must first be satisfied. These provisions delineate when a document can be said to be a "false document" and when its making constitutes forgery in the eyes of law.

E.2. Section 463 IPC defines forgery as follows:

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

E.3. Section 464 IPC explains when a person is said to make a false document or electronic record. Broadly, a false document is made when a person:

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

E.4. From these provisions, it is clear that forgery is the act of making a document that purports to be made by someone else or under false authority. Merely writing false recitals, or including incorrect or misleading contents in a document, even if later found to be untrue, does not by itself amount to forgery unless it is shown that the accused

made the document pretending it was made or signed by another person.

E.5. In support of this settled position, reliance was placed on the judgment of the Hon'ble Supreme Court in ***Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751***, wherein the court has clarified the true import of Sections 463 and 464 IPC. It was held that forgery involves the making of a document which is intended to be believed as having been made by someone else. The Court observed that:

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

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

neither Section 467 nor Section 471 of the Code are attracted.”

- E.6. The impugned order notices this submission and the reliance placed on *Mohd. Ibrahim* (Supra) however, instead of applying the statutory test laid down therein, the Learned Magistrate has rejected the submission by making a generalized observation that it is alleged that the accused took original bonds, sold them, failed to deliver new bonds, and manipulated entries in the records of the Bank.
- E.7. Significantly, the impugned order itself records that the Applicant was not an employee or office bearer of the Bank and was not the person responsible for handling the registers or records of the Bank. Having so recorded, the Learned Magistrate has nevertheless failed to explain how allegations of manipulation of bank records could be attributed to the Applicant so as to constitute forgery in law.
- E.8. Having failed to apply the statutory test for forgery, the Learned Magistrate has then sought to shift the enquiry by observing that the offence under Section 109 IPC “will come into play” and that the role of the Applicant would have to be adjudicated by testing the evidence. Such an approach is legally impermissible. Section 109 IPC is a derivative provision and presupposes the existence of a legally sustainable principal offence. Where the essential ingredients of forgery are not made out, the question of abetment does not arise.
- E.9. The test at the stage of discharge is not whether evidence may possibly be led at a future stage, but whether, the allegations on the basis of the charge-sheet and accompanying material, make out the essential ingredients of the alleged offence. The impugned order fails to undertake this exercise in relation to forgery offences.
- E.10. The conclusion that a “strong suspicion” exists is thus recorded without examining the statutory definition of forgery, without applying the binding precedent relied upon by the Applicant, and without assigning any cogent reasons for rejecting the submission. Such vague reasoning amounts to non-application of mind and a material irregularity in exercise of jurisdiction.

E.11. In the absence of any false document within the meaning of Section 464 IPC, the continuation of prosecution for offences under Sections 465, 468 and 471 IPC is wholly unsustainable. The impugned order, insofar as it rejects the Applicant's submission on forgery, is therefore liable to be quashed and set aside.

ERRONEOUS INVOCATION OF SECTION 109 IPC IN THE ABSENCE OF ANY ALLEGATION OR MATERIAL DISCLOSING ABETMENT.

F. It is respectfully submitted that the Learned Magistrate has committed a serious error of law in sustaining the allegation of abetment under Section 109 of the Indian Penal Code, despite the complete absence of any allegation or material disclosing the essential ingredients of abetment as defined under Section 107 IPC.

F.1. It was specifically submitted before the Learned Magistrate that abetment requires active instigation, intentional aiding, or deliberate participation in the commission of an offence, and cannot be inferred merely on the basis of association, status, or position. The settled position of law is that mere presence, knowledge, acquiescence, or holding of an office is wholly insufficient to attract Section 109 IPC.

F.2. In the present case, the charge-sheet does not allege any overt act of instigation on the part of the Applicant. There is no allegation that the Applicant induced the Bank, deceived it, participated in any illegal design, or facilitated the commission of any offence. The only basis for implication is that the Applicant was one of the Directors of Home Trade Ltd. at the relevant time.

F.3. The impugned order does not identify any act, omission, or conduct attributable to the Applicant which could constitute abetment in law.

F.4. Section 109 IPC is derivative in nature and presupposes the existence of a legally sustainable principal offence. As demonstrated in the preceding grounds, the allegations under Sections 406, 409, 420, 465, 468 and 471 IPC are themselves unsustainable for want of essential ingredients. Once the substratum of the alleged substantive offences fails, the allegation of abetment automatically collapses.

F.5. The impugned order does not record any reasoning as to how the ingredients of Section 107 IPC are satisfied in the allegations, and proceeds on vague and generalized observations of “strong suspicion” without examining the statutory requirements of abetment. Such mechanical invocation of Section 109 IPC is impermissible in law.

PERVERSE FINDING OF “STRONG SUSPICION” AGAINST THE APPLICANT BASED SOLELY ON HIS STATUS AS A DIRECTOR, IN VIOLATION OF THE SETTLED LAW THAT THERE IS NO VICARIOUS CRIMINAL LIABILITY UNDER THE IPC

G. It is respectfully submitted that the impugned order suffers from a fundamental error of law and perversity in holding that there exists “good grounds and material” giving rise to a “strong suspicion” against the Applicant, when in fact the entire prosecution case against him is founded solely on his designation as a Director of Home Trade Ltd.

G.1. The charge-sheet and the complaint pertain entirely to the acts and transactions of Home Trade Ltd., the company through which the dealings with the complainant Bank were undertaken. There is no allegation that any funds were paid to, retained by, or misappropriated by the Applicant in his personal capacity. All payments were made to the official accounts of the company, and all documents emanated from or were executed on behalf of the company.

G.2. Though the company itself has not been arrayed as an accused, the prosecution seeks to fasten criminal liability upon the Applicant merely by virtue of his position as a Director. Such prosecution is impermissible in law. The Indian Penal Code does not recognise vicarious criminal liability except where expressly provided by statute, and in the absence of such statutory provision, a director cannot be held criminally liable for acts allegedly committed by the company unless there is material disclosing his personal role and mens rea.

G.3. The Learned Magistrate has himself observed that a director may not ordinarily incur criminal liability for the acts of the company. Having so observed, the impugned order then proceeds to hold, in a self-contradictory manner, that the informant has given a “specific role” to the Applicant and that the Applicant, along with other

directors, induced the Bank to part with Government Securities and misused them for their own benefit.

G.4. A bare reading of the complaint and the charge-sheet, however, reveals that no such specific role is attributed to the Applicant. The complaint merely names the Applicant as a Director of Home Trade Ltd. and does not allege any act or decision taken by the Applicant in his personal capacity.

G.5. The impugned order does not identify what this alleged “specific role” is, or what material supports such an inference. The observation that the role of the Applicant has been “stated independently as the director of Home Trade Limited” is legally meaningless, as mere designation cannot constitute a criminal role in the absence of specific acts or criminal intent.

G.6. The finding that there exists “good grounds and material on record” to have a strong suspicion of abetment is recorded without reference to any material forming part of chargesheet attributable to the Applicant. Broad expressions such as “larger involvement”, “overall circumstances”, and “strong suspicion” are employed as a substitute for legal reasoning, without correlating them to the essential ingredients of any alleged offence.

G.7. The finding that there exists “good grounds and material on record” to have a strong suspicion of abetment is recorded without reference to any document, witness statement, transaction, or circumstance attributable to the Applicant. Broad expressions such as “larger involvement”, “overall circumstances”, and “strong suspicion” are employed as a substitute for legal reasoning, without correlating them to the essential ingredients of any alleged offence.

G.8. In *Sunil Bharti Mittal v. Central Bureau of Investigation*, (2015) 4 SCC 609, the Hon’ble Supreme Court categorically held that a director or officer of a company cannot automatically be held liable for offences committed by the company unless there is material showing his active role in the commission of the offence and the presence of criminal intent. The Court observed that “the principle of alter ego” cannot be invoked to implicate an individual unless there is

material to lift the corporate veil and show his personal involvement in the alleged acts.

G.9. Likewise, in *GHCL Employees Stock Option Trust v. India Infoline Ltd.*, (2013) 4 SCC 505, it was held that a director cannot be prosecuted merely by virtue of his designation or position. There must be specific allegations of acts done by him and intent attributable to him individually. A bald assertion that he was a director at the relevant time is insufficient to attract criminal liability.

G.10. Further, in *Delhi Race Club Ltd. v. State of Delhi [(2012) 8 SCC 680]*, the Hon'ble Supreme Court observed as follows:

“When the company itself is alleged to have committed the offence, there is no question of attributing vicarious liability to its office-bearers for offences such as cheating or criminal breach of trust. The office-bearers can be prosecuted only if direct and specific allegations are levelled against them individually. The complainant must demonstrate that he was deceived or cheated by the personal acts of the office-bearers.”

G.11. In the present case, even assuming the prosecution's allegations to be true, the entire transaction forming the basis of the charge-sheet pertains to Home Trade Ltd., a registered company, which acted as a contracting party in its own corporate capacity. All the allegations relate to acts of the company in the course of its business.

G.12. Significantly, the company itself has not been arrayed as an accused in the case. The prosecution has chosen to charge only its directors, including the present Petitioner, without attributing any specific role or act done by them individually. The charge-sheet contains no material showing any meeting, communication, or act of inducement by the Petitioner. The allegations, even if taken at their face value, are directed exclusively against the company and not against the Petitioner in his personal capacity.

G.13. In such circumstances, the continuation of proceedings against the Petitioner amounts to attributing vicarious criminal liability, which is impermissible in law and constitutes an abuse of the process of Court.

- H. In view of the foregoing facts, circumstances, and legal submissions, it is respectfully submitted that the entire prosecution against the Petitioner is wholly misconceived and unsustainable in law. The allegations in the charge-sheet, even if taken at their face value and accepted in their entirety, do not disclose the commission of any offence.
- I. In view of the foregoing facts, circumstances and grounds, it is submitted that the impugned order dated 13.01.2026 rejecting the application for discharge suffers from patent illegality, non-application of mind and material irregularity. The continuation of criminal proceedings against the Petitioner in such circumstances results in grave miscarriage of justice. The impugned order therefore warrants interference by this Hon'ble Court in exercise of its powers under Sections 397 and 401 of the Code of Criminal Procedure, 1973.

PRAYER

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

- a) Call for and examine the Record and Proceedings of Case No. 255 of 2023 pending before the Court of the Learned Additional Chief Judicial Magistrate, 47th Court, Esplanade, Mumbai;
- b) Allow the present Criminal Revision Petition and set aside the order dated 13.01.2026 passed by the Learned Additional Chief Judicial Magistrate, 47th Court, Esplanade, Mumbai;
- c) Discharge the Petitioner from all the offences alleged in Case No. 255 of 2023 arising out of FIR No. 65 of 2002 registered with Vishrambag Police Station, Pune;
- d) Stay further proceedings in Case No. 255 of 2023 pending before the Learned Additional Chief Judicial Magistrate, 47th Court, Esplanade, Mumbai, during the pendency and final disposal of the present Criminal Revision Application;

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