

**ANNEXURE 'Y'****ADVOCATE'S CHECK LIST (TO BE CERTIFIED BY ADVOCATE-ON-RECORD)**

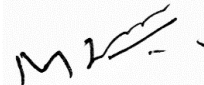
Indicate Yes or NA

- |     |   |                              |
|-----|---|------------------------------|
| 1.  | SLP (C) has been filed in Form No.28 with certificate.  | <input type="checkbox"/> YES |
| 2.  | The Petition is as per the provision of Order XV Rule 1.  | <input type="checkbox"/> YES |
| 3.  | The papers of SLP have been arranged as per Order XXI, Rule (3)(1)(f).  | <input type="checkbox"/> YES |
| 4.  | Brief list of dates/events has been filed.  | <input type="checkbox"/> YES |
| 5.  | Paragraphs and pages of paper books have been numbered consecutively and correctly noted in Index.  | <input type="checkbox"/> YE  |
| 6.  | Proper and required number of paper books (1+1) have been filed.  | <input type="checkbox"/> YES |
| 7.  | The particulars of the impugned judgment passed by the court(s) below are uniformly written in all the documents.   | <input type="checkbox"/> YES |
| 8.  | In case of appeal by certificate the appeal is accompanied by judgment and decree appealed from and order granting certificate.                                 | <input type="checkbox"/> NA  |
| 9.  | The Annexures referred to in the petition are true copies of the documents before the court(s) below and are filed in chronological order as per List of Dates. | <input type="checkbox"/> YES |
| 10. | The annexures referred to in the petition are filed and indexed separately and not marked collectively.   | <input type="checkbox"/> YES |
| 11. | In SLP against the order passed in Second Appeal, copies of the orders passed by the Trial Court and First Appellate Court have been filed.                     | <input type="checkbox"/> NA  |
| 12. | The complete listing proforma has been filled in, signed and included in the paper books.   | <input type="checkbox"/> YES |

13. In a petition (PIL) filed under clause (d) of Rule 12(1) Order XXXVIII, the petitioner has disclosed: NA
- (a) his full name, complete postal address, e-mail address, phone number, proof regarding personal identification, occupation and annual income, PAN number and National Unique Identity Card number, if any;
  - (b) the facts constituting the cause of action;
  - (c) the nature of injury caused or likely to be caused to the public;
  - (d) the nature and extent of personal interest, if any, of the petitioner(s);
  - (e) details regarding any civil, criminal or revenue litigation, involving the petitioner or any of the petitioners, which has or could have a legal nexus with the issue(s) involved in the Public Interest Litigation.
14. In case of appeal under Armed Forces Tribunal Act, 2007, the petitioner/appellant has moved before the Armed Forces Tribunal for granting certificate for leave to appeal to the Supreme Court. NA
15. All the papers books to be filed after curing the defects shall be in order. YES

I hereby declare that I have personally verified the petition and its contents and it is in conformity with the Supreme Court Rules 2013. I certify that the above requirements of this Check List have been complied with. I further certify that all the documents necessary for the purpose of hearing of the matter have been filed.

Signature



AoR's Name **MILIND KUMAR**  
AOR Code **1566**  
Contact No. **9868161390**

New Delhi;  
Date: 13.5.2026

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

**SPECIAL LEAVE PETITION (CRL) No. \_\_\_\_\_ OF 2026**

[From The Final Judgment and Order Dated 11.12.2025 Passed by the High Court Of Bombay Bench at Aurangabad in Criminal Revision Application No. 366 of 2025]

**WITH PRAYER FOR INTERIM RELIEF**

**IN THE MATTER OF: -**

Sanjay Hariram Agarwal ...Petitioner

Versus

The State of Maharashtra ...Respondent

WITH

**CrI.M.P. No. \_\_\_\_\_ of 2026**  
(Application for condonation of delay)

AND

**CrI.M.P. No. \_\_\_\_\_ of 2026**  
(Application for exemption from filing official translation)

*PAPER – BOOK*

(FOR INDEX KINDLY SEE INSIDE)

**ADVOCATE FOR THE PETITIONER: MR. MILIND KUMAR**

## RECORD OF PROCEEDINGS

S.NO.	PARTICULARS	PAGES
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

## INDEX

S.No	Particulars of document	Page no. of part to which it belongs		Remarks
		Part I (Contents of paper Book)	Part II Contents of file alone	
(i)	(ii)	(iii)	(iv)	(v)
	Court Fee			
1.	O/R on Limitation	A	A	
2.	Listing Proforma	A1-A2	A1-A2	
3.	Cover page of paper Book		A3	
4.	Index of Record of Proceedings		A4	
5.	Limitation Report prepared by the Registry		A5	
6.	Defect List		A6	
7.	Note Sheet		NS1 to.....	
8.	Synopsis & List of Dates	B-G		
9.	Final impugned judgment and order dated 11.12.2025 passed by the High Court of Bombay Bench at Aurangabad in Criminal Revision Application No.366/2025.	1-11		
10.	SLP with affidavit.	12-20		
11.	<b><u>APPENDIX:</u></b> Under Sections 420, 406, 120B IPC.	21		
12.	<b>ANNEXURE P-1:</b> True translated copy of FIR No.106/2002 dated 08.05.2002 lodged at Police Station-Osmanabad, Maharashtra.	22-25		
13.	<b>ANNEXURE P-2:</b> True copy of charge framed order u/s 120-B, 406,420,468,471 r/w 34 IPC dated 08.05.2014 in RCC No.398/2002 passed by Ld. Chief Judicial Magistrate, Osmanabad.	26-29		

14.	<b>ANNEXURE P-3:</b> True copy of judgment dated 23.08.2024 titled Delhi Race Club (1940) Limited and Ors. versus State of UP (2024) 10 SCC 690 passed by this Hon'ble Court.	30-61		
15.	<b>ANNEXURE P-4:</b> True copy of order dated 17.07.2025 passed by this Hon'ble Court in SLP (Crl.) Nos.10625–10626 of 2024.	62-63		
16.	<b>ANNEXURE P-5:</b> True copy of judgment M/s Shikhar Chemicals versus The State of Uttar Pradesh & Anr. Special Leave to Appeal (Criminal) No.11445/2025 decided on 04.08.2025 passed by this Hon'ble Court.	64-73		
17.	<b>ANNEXURE P-6:</b> True copy of the Criminal Application No. Nil of 2025 filed by the petitioner herein under Section 216 Cr.P.C. dated 14.08.2025 before the Ld. CJM, Osmanabad.	74-80		
18.	<b>ANNEXURE P-7:</b> True copy of order of Hon'ble Addl. Chief Judicial Magistrate Court dated 13.10.2025.	81-94		
19.	<b>ANNEXURE P-8:</b> True copy of order dated 10.11.2025 passed by this Hon'ble Court in SLP (Crl.) No.16982/2025.	95		
20.	<b>ANNEXURE P-9:</b> True copy of the Criminal Revision Application No.366 of 2025 filed on 15.11.2025 before the Hon'ble High Court of Bombay Bench at Aurangabad.	96-123		
21.	Application for Condonation of delay.	124-127		
22.	Application for exemption from filing official translation.	128-129		
23.	FIR Details.	130		
24.	F/M	131		
25.	Vakalatnama.	132		

IN THE SUPREME COURT OF INDIA

CIVIL/CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL) NO. OF 2026

IN THE MATTER OF:

Sanjay Hariram Agarwal ...Petitioner  
Versus  
The State of Maharashtra ...Respondent

OFFICE REPORT ON LIMITATION

1. The Petition is/are within time.
2. The petition is barred by time and there is delay of .63 days in filing the same against order dated 11.12.2025 and petition for condonation of 63..... days delay has been filed.
3. The petition is barred by time and there is delay of ... days in re-filing the same and petition for condonation of ..... days delay has been filed.

New Delhi  
Dated : 13.5.2026

BRANCH OFFICER

## PROFORMA FOR FIRST LISTING

SECTION:II

The case pertains to (Please tick/check the correct box):

- Central Act: (Title) IPC  
 Section: 420, 406,120B IPC  
 Central Rule: (Title) \_\_\_\_\_NA\_\_\_\_\_  
 Rule No(s): \_\_\_\_\_NA\_\_\_\_\_  
 State Act: (Title) \_\_\_\_\_NA\_\_\_\_\_  
 Section: \_\_\_\_\_NA\_\_\_\_\_  
 State Rule: (Title) \_\_\_\_\_NA\_\_\_\_\_  
 Rule No(s): \_\_\_\_\_NA\_\_\_\_\_  
 Impugned Interim order : (Date)\_\_\_\_NA\_\_\_\_\_  
 Impugned Final Order/Decree : (Date) 11.12.2025  
 High Court: (Name) High Court Of Bombay Bench at Aurangabad  
 Names of Judges: Hon'ble Justice Abhay S. Waghwase, J  
 Tribunal / Authority : (Name) \_\_\_\_\_N/A\_\_\_\_\_

- 
1. Nature of Matter:  Civil  Criminal  
 2. (a) Petitioner/Appellant No.1: Sanjay Hariram Agarwal  
 (b) e-mail ID: \_\_\_\_\_[sanjaywide@gmail.com](mailto:sanjaywide@gmail.com)  
 (c) Mobile phone No. 9667527222  
 3. (a) Respondent N.1: The State of Maharashtra  
 (b) e-mail ID: \_\_\_\_\_NA\_\_\_\_\_  
 (c) Mobile phone No. \_\_\_\_\_NA\_\_\_\_\_  
 4. (a) Main category classification: \_\_\_\_\_014\_\_\_\_\_  
 (b) Sub classification: \_\_\_\_\_1407\_\_\_\_\_  
 5. Not to be listed before: \_\_\_\_\_NA\_\_\_\_\_  
 6. (a) Similar disposed of matter with citation, if any, & case details: No similar disposed.  
 (b) Similar Pending matter with case details: Similar matter pending SLP (Cri.) No.16982/2025 & SLP (Cri.) Nos.10625-10626/2024.  
 7. **Criminal Matters:** Yes  
 (a) Whether accused/convict has surrendered:  Yes  No  
 (b) FIR No.106/2002 Dt. 8.05.2002  
 (c) Police Station: Osmanabad  
 (d) Sentence Awarded: No  
 (e) Period of Sentence undergone including period of Detention/Custody undergone: \_\_\_\_\_Nil\_\_\_\_\_  
 (f) Whether any earlier case between the same parties is Filed \_\_\_\_\_No\_\_\_\_\_  
 (g) Particulars of the FIR and Case \_\_\_\_\_No\_\_\_\_\_

(h) Whether any bail application was preferred earlier and decision thereupon \_\_\_\_\_ No \_\_\_\_\_

8. **Land Acquisition Matters:**

(a) Date of Section 4 notification: \_\_\_\_\_ NA \_\_\_\_\_

(b) Date of Section 6 notification: \_\_\_\_\_ NA \_\_\_\_\_

(c) Date of Section 17 notification: \_\_\_\_\_ NA \_\_\_\_\_

9. **Tax Matters:** State the tax effect: \_\_\_\_\_ NA \_\_\_\_\_

10. **Special Category** (First petitioner/appellant only):

Senior Citizen > 65 years       SC/ST  **Woman**/ Child

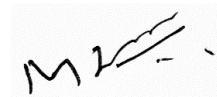
Disabled  Legal Aid case       In custody

11. Vehicle Number (in case of Motor Accident Claim matters):

\_\_\_\_\_ N/A \_\_\_\_\_

12. Whether there was /is litigation on the same point of law, if yes, details thereof SLP (Cri.) No.16982/2025 & SLP (Cri.) Nos.10625-10626/2024.

Date: 13.05.2026



[MILIND KUMAR]

AOR for petitioner(s)/Appellant(s)

Registration No:1566

[milindkraorsc@gmail.com](mailto:milindkraorsc@gmail.com)

## **B**

### **SYNOPSIS AND LIST OF DATES**

The seminal question of law arising for consideration in the present petition is whether charges under Sections 406 and 420 of the Indian Penal Code can legally be framed in the alternative in respect of the same transaction.

The issue concerning the permissibility of preserving offences founded upon mutually destructive ingredients under Sections 406 and 420 IPC is presently under consideration before this Hon'ble Court in *Bhim Sain Arora & Ors. v. State (NCT of Delhi)*, SLP (CrI.) No.16982/2025 wherein challenge has been laid to the continuance of charges under Sections 409/420 IPC notwithstanding the law laid down by this Hon'ble Court in *Delhi Race Club (1940) Ltd. v. State of Uttar Pradesh (2024) 10 SCC 690*.

In the present matter, the Hon'ble High Court itself has expressly held that offences under Sections 406 and 420 IPC are antithetical and incapable of co-existing, yet proceeded to direct that the said offences be framed alternatively. The present petition therefore raises the further and more fundamental issue whether, after recording such categorical finding, the High Court could legally preserve both offences in an alternative form.

It is further submitted that Special Leave Petition (CrI.) Nos.10625-10626/2024 arising out of the same Criminal Revision proceedings involved in the present matter is also pending before this Hon'ble Court.

The grievance arises in the backdrop of the following broad facts:

The Petitioner is the original Accused No. 7 in R.C.C. No. 398 of 2002 pending before the learned Additional Chief Judicial Magistrate, Osmanabad. The case arises out of FIR No. 106 of 2002 registered at

Osmanabad Police Station for alleged offences under Sections 120B, 218, 406, 409, 420, 468, 471 r/w 34 of the Indian Penal Code, 1860 (IPC), relating to alleged misappropriation of money in transactions between the Osmanabad District Central Co-operative Bank (ODCC Bank), the Nagpur District Central Co-operative Bank (NDCC Bank), and Home Trade Limited (HTL), of which the Petitioner was a Director.

The impugned judgment and order dated 11.12.2025 passed by the High Court of Judicature at Bombay, Bench at Aurangabad, in Criminal Revision Application No. 366 of 2025, has partly allowed the revision petition filed by the Petitioner and, while acknowledging that charges under Sections 406 and 420 IPC are “antithetical” and “cannot co-exist,” has directed the learned trial court to re-frame the charges by framing the said charges “in the alternative.”

The Petitioner herein challenges the impugned order only insofar as it directs framing of charges under Sections 406 and 420 of IPC in the “*alternative*”. It is submitted that, in view of the settled legal position laid down by this Hon'ble Court from decades, which has been reiterated in *Delhi Race Club Ltd. v. State of U.P., (2024) 10 SCC 690*, the two offences are mutually exclusive and antithetical, one being a case of valid entrustment followed by breach of trust (Section 406), and the other being a case of inducing delivery by deception (Section 420).

The foundational factual ingredients of the two offences are therefore conceptually irreconcilable and incapable of co-existing in relation to the same transaction. Consequently, such offences can neither be framed together nor preserved in an alternative form in the same prosecution.

## **D**

The Petitioner submits that the impugned order perpetuates the very ambiguity and prejudice caused by an antithetical charge, it sought to remedy, since the Petitioner is now required to answer and defend himself against two mutually contradictory charges rooted in irreconcilable factual premises.

Thus, the petitioner is aggrieved to that limited extent by the impugned order and therefore, the present petition.

It is submitted that pursuant to the impugned order, the charges have been reframed by the order of the Hon'ble Chief Judicial Magistrate dated 15.01.2026 wherein the charges under section 406 and 420 have been framed alternatively. It is submitted that this consequential order dated 15.01.2026 demonstrates the continuing prejudice caused to the Petitioner by alternatively framing offences under Sections 406 and 420 IPC in relation to the same alleged transaction.

### **LIST OF DATES AND EVENTS**

<b>DATE</b>	<b>EVENTS</b>
2002	<p>RCC No.398/2002 is registered emanating from alleged financial transactions involving the Osmanabad District Central Co-operative Bank Ltd., the Nagpur District Central Co-operative Bank Ltd. and Home Trade Ltd. ("HTL"), relating to investment of funds in Government Securities during the period 2001–2002.</p> <p>It is the prosecution case that an amount of ₹30 crores was transferred by NDCC Bank to ODCC Bank and thereafter ODCC Bank transferred the said amount to Home Trade Ltd. for purchase of Government Securities. That the securities were not delivered and that the amount was misappropriated pursuant to a criminal conspiracy involving office-bearers of</p>

**E**

	<p>the banks and Home Trade Ltd. The Petitioner was arrayed as Accused No.7 in the said case. He was, at the relevant time, a director of HTL. True translated copy of FIR No.106/2002 dated 08.05.2002 lodged at Police Station-Osmanabad, Maharashtra is annexed herewith and filed as <b><u>Annexure-P-1 (Page 22-25)</u></b>.</p>
14.09.2002	<p>The chargesheet has been filed.</p>
08.05.2014	<p>The charges were framed u/s 120-B, 406,420,468,471 r/w 34 IPC. True copy of charge framing order dated 08.05.2014 is annexed herewith and filed as <b><u>Annexure-P-2 (Page 26-29)</u></b>.</p>
23.08.2024	<p>This Hon'ble Court in the judgment Delhi Race Club (1940) Limited and Ors. versus State of UP (2024) 10 SCC 690 have exhaustively explained what constitutes criminal breach of trust and what constitutes cheating and while holding that the offences under 420 and 406 IPC are antithetical to each other and cannot co-exist, have drawn distinction between mere breach of contract and the offence of criminal breach of trust and cheating. True copy of judgment dated 23.08.2024 titled Delhi Race Club (1940) Limited and Ors. versus State of UP (2024) 10 SCC 690 passed by this Hon'ble Court is marked and annexed as <b><u>Annexure P-3 (Pages 30-61)</u></b>.</p>
17.07.2025	<p>Hon'ble Supreme Court in SLP (Crl.) Nos.10625–10626 of 2024, by order dated 17.07.2025, directed the Trial Court to expedite the proceedings in RCC No. 398/2002 and make an endeavour to complete the trial on or before November 2025. The SLP arises out of cases between the Nagpur Bank and Osmanabad Bank relating to the money seized as proceeds of crime and the interest arising out of it. The time has been</p>

**F**

04.08.2025	<p>further extended for six months by this Hon'ble Court's order dated 09.01.2026. True copy of order dated 17.07.2025 passed by this Hon'ble Court in SLP (Crl.) Nos.10625–10626 of 2024 is filed herewith and marked as <b><u>Annexure P-4 (Page 62-63).</u></b></p> <p>This Hon'ble Court in the judgment M/s Shikhar Chemicals versus The State of Uttar Pradesh and Anr. Special Leave to Appeal (Criminal) No.11445/2025, reiterated the proposition of law as laid down in Delhi Race Club (1940) Limited (supra), as to what constitutes cheating punishable under Section 420 of the IPC and criminal breach of trust punishable under Section 406 of the IPC, reaffirming that the offences under 420 and 406 IPC are antithetical to each other and cannot co-exist. True copy of judgment M/s Shikhar Chemicals versus The State of Uttar Pradesh and Anr. Special Leave to Appeal (Criminal) No.11445/2025 decided on 04.08.2025 passed by this Hon'ble Court is marked and annexed as <b><u>Annexure P-5 (Pages 64-73).</u></b></p>
14.08.2025	<p>The Petitioner filed an application under Section 216 Cr.P.C for alteration of charges before the Hon'ble Addl. Chief Judicial Magistrate Court point out the apparent and patent error in charge in terms of the judgement of this Hon'ble Court in <i>Delhi Race Club (Supra)</i>. True copy of the application filed by the petitioner under Section 216 Cr.P.C. dated 14.08.2025 is herewith and marked as <b><u>Annexure P-6 (Page 74-80).</u></b></p>

**G**

13.10.2025	The application under 216 Cr.P.C was dismissed by the Hon'ble Addl. Chief Judicial Magistrate Court. True copy of order of Hon'ble Addl. Chief Judicial Magistrate Court dated 13.10.2025 is annexed herewith and filed as <b><u>Annexure-P-7 (Page 81-94)</u></b> .
10.11.2025	That this Hon'ble Court in a similar in the case of <b><i>Bhim Sain Arora &amp; Ors vs State of (NCT of Delhi), SLP (Crl.) No. 16982/2025</i></b> , issued notice. True copy of order dated 10.11.2025 passed by this Hon'ble Court in SLP (Crl.) No.16982/2025 is annexed herewith and marked as <b><u>Annexure P-8 (Page - 95)</u></b> .
15.11.2025	The applicant filed a revision petition before the Hon'ble High Court of Bombay Bench at Aurangabad against the dismissal of application under section 216 of Cr.P.C. True copy of the Criminal Revision Application No.366 of 2025 filed on 15.11.2025 before the Hon'ble High Court of Bombay Bench at Aurangabad is annexed herewith and marked as <b><u>Annexure P-9 (Page 96-123)</u></b> .
11.12.2025	The Revision petition was allowed quashing Magistrate's order dated 13.10.2025 and directing the trial court to re-frame and explain the charge by framing charge under Section 406 and 420 in the alternative.
13.05.2026	Hence the present SLP.

U / NO. 15280 /2025CASE NO. : CRI-REVH/366/2025

PERPARED BY :

MRS. R. S. WALVE

CLERK :

MR. A. K. KHAN

CLERK :

MR. N. A. GADHARI

CLERK : DR  
22/12/25

MRS. U. B. MORE

CLERK :

COMPARED BY :

CERTIFIED BY PA / PS

VERIFIED &amp; EXAMINED BY :

MR. P. B. NAKADE

SECTION OFFICER: P  
22/12/25

MR. S. Y. SHAIKH

SECTION OFFICER:

PAGES : 9

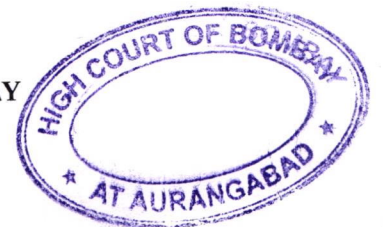
PHOTOCOPY AND COMPARING CHARGES :

TOTAL AMOUNT : 63 /-

- |   |   |   |                                     |
|---|---|---|-------------------------------------|
| 1 | THE DATE ON WHICH THE COPY WAS APPLIED FOR        | : | 17/ 12/ 2025                        |
| 2 | THE DATE ON WHICH OFFICE OBJECTION REMOVED        | : | <u>01</u> / 2025                    |
| 3 | THE DATE ON WHICH APPLICATION WAS COMPLETED       | : | <u>28</u> / 12/ 2025                |
| 4 | THE DATE GIVEN FOR TAKING DELIVERY OF THE COPY    | : | 09/ 01/ 2026                        |
| 5 | THE DATE ON WHICH THE COPY WAS READY FOR DELIVERY | : | <u>23</u> / <u>12</u> / 2025        |
| 6 | THE DATE ON WHICH IT WAS DELIVERED OR POSTED      | : | <u>6</u> / <u>12</u> / 20 <u>25</u> |

P  
06/12/25  
SECTION OFFICER

CERTIFIED COPY BRANCH  
HIGH COURT APPELLATE SIDE, BOMBAY  
BENCH AT AURANGABAD



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL REVISION APPLICATION NO. 366 OF 2025**

Sanjay Hariram Agarwal,  
Age : 60 Years, Occu: Business,  
R/o 7, Hari Sava Street, Kidderpore,  
Kolkata – 700 023,  
West Bengal.

... Applicant  
[Orig. Accused]

Versus

The State of Maharashtra,  
Through Police Station, Osmanabad,  
Tq. & Dist. : Osmanabad.

... Respondent

.....  
Mr. P. R. Katneshwarkar, Senior Advocate i/by Mr. N. S. Jaju,  
Advocate for the Revision Petitioner.  
Mr. S. A. Gaikwad, APP for the Respondent-State.

.....

**CORAM : ABHAY S. WAGHWASE, J.**

Reserved on : 09.12.2025

Pronounced on : 11.12.2025

**JUDGMENT :**

1. Revisionist-original accused no.7 hereby takes exception to the order dated 13.10.2025, rejecting his application Exhibit 953 seeking alteration or dropping of charges by invoking Section 216 of Cr.P.C.
2. In nutshell, it is the case of revision petitioner that, FIR No. 106 of 2002 was registered at Osmanabad Police Station for commission of offence under Sections 120B, 218, 406, 409, 420, 468, 471 r/w 34



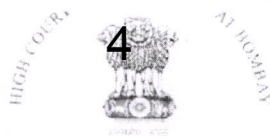
CriRevn-366-2025



-2-

of IPC against in all ten persons on the premise that, deceased accused no.1 and accused no.10 were Chairman of District Central Cooperative Bank, Osmanabad and Nagpur respectively. That, by colluding and conniving with each other and other accused, it is alleged that, an amount of Rupees Thirty Crores was transferred and credited from Nagpur District Central Cooperative Bank (NDCC Bank), of which accused no.10 was Chairman, to the account of Osmanabad District Central Cooperative Bank (ODCC Bank), of which accused no.1 was Chairman, and thereafter, at the instance of accused no.4, who was Deputy Chief Officer of Osmanabad District Cooperative Bank, along with accused nos. 1 and 3, unauthorizedly credited the above amount in the account of one Home Trade Limited (of which accused no.7-present revision petitioner is Director) for purchasing Government Securities and that, on the same day, an amount of Rs.29,99,99,766/- was again transferred to account of NDCC Bank. These all transactions, according to informant, were illegal, without prior permission of Commissioner of Cooperative Societies and moreover, it was in violation of rules of RBI. On above accusations, FIR came to be registered for above offence.

3. Learned senior counsel for revision petitioner pointed out that, revision petitioner is arraigned as accused no. 7 in above crime and



moreover, he is falsely involved in the above crime. According to learned senior counsel, there was no material to connect present revision petitioner with other accused in conspiring or conniving to commit above alleged transactions. Therefore, learned senior counsel pointed out that, when investigation did not reveal any incriminating material against present revision petitioner, he had applied for discharge under Section 239 of Cr.P.C. but the same came to be dismissed by order dated 07.08.2013.

4. Learned senior counsel would further submit that, here, there is patent illegality and irregularity on the part of investigating machinery as well as trial court in invoking both the provisions i.e. under Sections 406 and 420 of IPC, in one and the same case. Learned senior counsel would emphasize that, both these provisions cannot co-exist in one and the same case, as the same are antithetical and cannot go hand in hand. According to learned senior counsel, in spite of so and there being clear law laid down by the Hon'ble Apex Court regarding the above, charges have been framed which comprises both, the offence under Section 406 as well as under Section 420 of IPC along with other offences, which, according to learned senior counsel, is impermissible in the eyes of law.

5. Apart from above submissions, learned senior counsel would submit that, here, even going by the nature of allegations, there is no criminality attributable to the accused as the transactions were purely civil in nature, of which there is clear remedy of recovery by way of civil proceedings. Consequently, criminal action, according to learned senior counsel, is misdirected.

6. Learned senior counsel criticized the observations of the trial court in its order dated 13.10.2025 pointing out that there is non-consideration of settled legal position and now, at the time of answering Section 313 Cr.P.C., learned senior counsel submits that, because of the ambiguity created by virtue of charges being framed both, under Section 406 and Section 420 of IPC, accused is not in a position to take up his defence and as such, according to learned senior counsel, revision petitioner would be deprived of fair trial. For all above reasons, learned senior counsel has raised following prayers :

*“C. The impugned order dated 13.10.2025 passed below Exhibit 953 in R.C.C. No. 398 of 2002, quashed and set aside and the application Exh. 953, under Section 216 Cr.P.C. be allowed by directing alteration of the contradictory and antithetical charges under Sections 406 and 420 and;*



*D. Pending hearing and final disposal of present revision application the further proceedings in R.C.C. No. 398 of 2002 may kindly be stayed.”*

7. Learned senior counsel, in support of his contentions, has placed reliance on the following rulings :

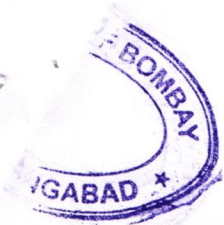
- a. *Delhi Race Club (1940) Limited and others v. State of Uttar Pradesh and another* (2024) 10 SCC 690.
- b. *Shikhar Chemicals v. State of Uttar Pradesh and another* 2025 SCC OnLine SC 1643.
- c. *Bharat Uttam Rajurkar and others v. The State of Maharashtra* [Cri. WP No. 1232 of 2017 decided on 12.01.2018 by this Court at Nagpur].
- d. *Om Prakash v. State of U.P.* 2023 SCC OnLine All 2817.
- e. *Anant Prakash Sinha alias Anant Sinha v. State of Haryana and another* (2016) 6 SCC 105.

8. In answer to above, learned APP pointed out that, there is no infirmity and illegality in the impugned order. He would point out that, at the time of framing charge, all accused were made aware of the nature of charge. That, subsequently, even charge has been framed and explained and plea of the accused is also recorded. Consequently, it is his submission that, there is no merit in the revision urging to alter or drop charge by invoking Section 216 of



Cr.P.C. According to learned APP, present revision petition itself is misconceived and not maintainable as, according to him, discharge application has already been rejected by the trial court. He would submit that, draft charges were made available and both sides were appraised about the contents of the charge and thereafter charge has been framed and so, objection raised at belated stage is, according to him, a clear attempt to evade or prolong trial. He further pointed out that present attempt of petitioner is merely to prolong and protract the trial which is already made time bound by the Hon'ble Apex Court being of the year 2002. He seeks reliance on the rulings of the Hon'ble Apex Court in ***K. Ravi v. State of Tamil Nadu and another*** reported in 2024 DGLS (SC) 816 and ***P. Kartikalakshmi v. Ganesh and another***, reported in 2017 (3) SCC 347.

9. After considering the above submissions and on going through the papers, here, there seems to be challenge to the order of rejection to alter charge, pressed into service by present revision petitioner who is arraigned as accused no.7 in above referred crime bearing no. 106 of 2002 registered at Osmanabad Police Station for commission of offence under Sections 120B, 218, 406, 409, 420, 468, 471 r/w 34 of IPC.



10. Primary and fundamental submission of learned senior counsel is that, here, crime has been registered under both, Section 406 as well as 420, amongst other offences, however, above both charges cannot be invoked in one and the same matter as they are antithetical to each other. Learned senior counsel's another submission is that, accused is supposed to answer under Section 313 Cr.P.C. and therefore, he is unable to take a specific defence in view of charges being framed both, under Section 406 and 420 of IPC. Consequently, he has prayed for altering the charge/dropping the charge. Before the trial court, he had preferred application below Exhibit 953 in R.C.C. No. 398 of 2002 for either altering the charge or dropping either of the charge, and the same has been rejected.

11. Record shows that, in this case, FIR was registered on 05.05.2002. After investigation, charge has already been framed. Vide applications Exhibits 306, 407 and 502, present revision petitioner, along with other accused, had prayed for discharge by invoking Section 239 of Cr.P.C. The learned Chief Judicial Magistrate, Osmanabad, by order dated 07.08.2013, observed that, there was *prima facie* case for framing charge against all accused and no case being made out on merit for discharge, application Exhibit 407 of present revision petitioner along with other applications of two other



CriRevn-306/2025



-8-

accused bearing nos. 306 and 502 came to be rejected by order dated 07.08.2013.

12. Record shows that, again present revision petitioner tendered application Exhibit 606, again seeking discharge and even this application, by order dated 06.05.2014, has been rejected and learned trial court has, in the concluding para observed that, matter is for framing charge but on account of absence of accused nos. 7 to 10, framing of charge has been adjourned to 08.05.2014. The learned Chief Judicial Magistrate also took a note and observed in the very order that, there were directions of the Hon'ble Apex Court to dispose off the matter by end of October, 2013 and such time has been extended till 31.10.2014, and thereby clearly directed all accused to remain present to answer the charge on 08.05.2014 without fail. Record shows that, on said date charge was also framed by learned Chief Judicial Magistrate.

13. Now, it appears that almost after more than a decade and when matter has reached the fag end of trial, in view of stage under Section 313 of Cr.P.C., surprisingly third attempt is taken, that too on the ground that Sections 406 and 420 cannot co-exist and do no go hand in hand and for the same, above referred rulings of the Hon'ble Apex Court are taken recourse to.



14. There is no dispute that, in view of above rulings of the Hon'ble Apex Court, both charges under Sections 406 and 420 cannot co-exist and are antithetical. Here, charge is already framed and there is no dispute to that extent. From copy of the charge it is emerging that amongst other offences, charges, both under sections 406 and 420 are framed. However, in view of the law laid down by the Hon'ble Apex Court in above relied cases, the same is not permissible. But, both charges can be framed in alternative and there is no illegality in the same. Consequently, to that extent, interference is called for. Hence, the following order :

**ORDER**

- I. Criminal Revision Application is partly allowed.
- II. The order dated 13.10.2025 passed below Exhibit 953 in R.C.C. No. 398 of 2002 by the learned Additional Chief Judicial Magistrate, Osmanabad is hereby quashed and set aside.
- III. Learned trial court to re-frame and explain the charge by framing charge under Section 406 and 420 in the alternative.
- IV. The revision is accordingly disposed off.

  
[ABHAY S. WAGHWASE, J.]

vre



**True Copy**

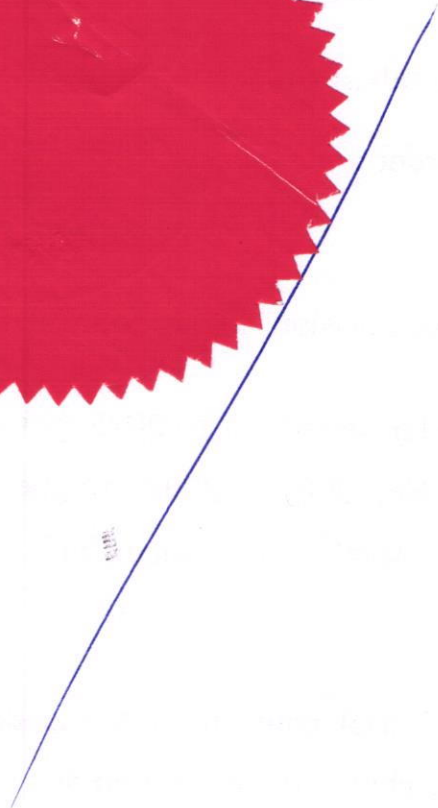
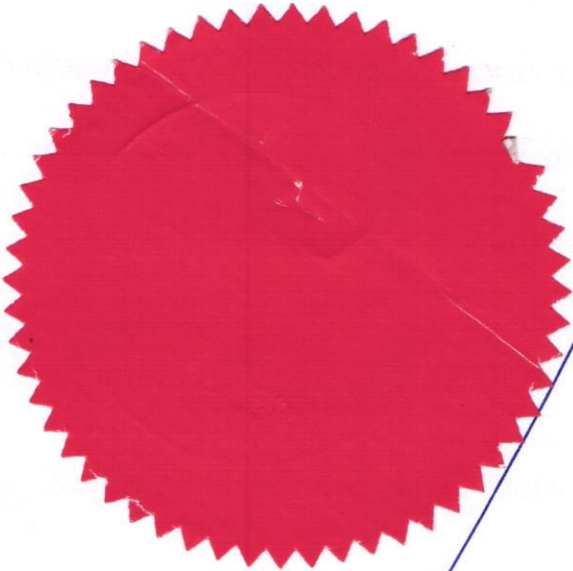
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Assistant Registrar  
High Court of Judicature of Bombay  
Bench at Aurangabad

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22/12/25

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22/12/25

72880  
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23/12/25



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IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
[S.C.R. Order XXII Rule 2(1) SCR, 2013]  
(Under Article 136 of the Constitution of India)

**Special Leave Petition (Crl.) No. \_\_\_\_\_ of 2026**

[Under Article 136 of the Constitution of India arising out of the Final judgment and order dated 11.12.2025 passed by the High Court of Bombay Bench at Aurangabad in Criminal Revision Application No. 366 of 2025]

**(WITH PRAYER FOR INTERIM RELIEF)**

**BETWEEN**

**POSITION OF PARTIES**

		In the Trial Court	In the High Court, Bombay	In this Court
1.	Sanjay Hariram Agarwal, Age : 60 Years, Occu,: Business, R/o 7 Hari Sava Street, Kidderpore, Kolkata700023, West Bengal	Accused	Petitioner	Petitioner

**VERSUS**

1.	The State of Maharashtra, Through Secretary, Department of Home, State Secretariat, Bombay, Maharashtra-400032	Prosecution	Respondent No.1	Contesting Respondent No.1
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SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF THE  
CONSTITUTION OF INDIA READ WITH ORDER XXII OF  
THE SUPREME COURT RULES, 2013

To

The Hon'ble the Chief Justice of India and his Companion Justices  
of the Hon'ble Supreme Court of India;

The Special Leave Petition of the Petitioner abovenamed:

**MOST RESPECTFULLY SHEWETH:**

1. The Petitioner above named respectfully submits that this petition seeking special leave to appeal is filed against the Final judgment and order dated 11.12.2025 passed by the High Court of Bombay Bench at Aurangabad in Criminal Revision Application No. 366 of 2025 whereby the Hon'ble High Court, while partly allowing the revision held that charges under Sections 406 and 420 of the Indian Penal Code, 1860 are antithetical to each other and cannot co-exist and accordingly directed the Ld. Magistrate to re-frame the charge, had erroneously directed the said charges to be framed in the alternative, which direction is contrary to the settled law and causes grave prejudice to the Petitioner in the conduct of his defense.

**2. QUESTIONS OF LAW:**

The following questions of law arise for consideration by this Hon'ble Court:

- (a) Whether offences under Sections 406 and 420 IPC, being mutually exclusive and antithetical in their essential ingredients, can lawfully be framed as charges in the alternative in relation to the same transaction?
- (b) Whether a direction to frame antithetical charges in the alternative leads to an unclear and contradictory charge causing prejudice to the accused in preparation and presentation of his defense, and is

thus contrary to the right to a fair trial under Article 21 of the Constitution?

- (c) Whether the direction given by the Hon'ble High Court to frame the antithetical charges in the alternative is completely perverse, incorrect and bad in law?
- (d) Whether, after recording a categorical finding that offences under Sections 406 and 420 IPC are antithetical and incapable of co-existing, the Hon'ble High Court could nevertheless direct framing of such charges alternatively?
- (e) Whether the impugned judgment is contrary to the law laid down by this Hon'ble Court in Delhi Race Club (1940) Ltd. v. State of Uttar Pradesh, (2024) 10 SCC 690?
- (f) Any other questions of law which this Hon'ble Court deems fit in the facts and circumstances of the present case.

**3. DECLARATION IN TERMS OF RULE 2 (2):**

The Petitioner states that no other petition seeking leave to appeal has been filed by him against the Final judgment and order dated 11.12.2025 passed by the High Court of Bombay Bench at Aurangabad in Criminal Revision Application No.366 of 2025.

**4. DECLARATION IN TERMS OF RULE 4:**

The Annexures P-1 to P-9 produced along with the Special Leave Petition are true copy of the pleadings/documents which formed part of the records of the case in the Court/ Tribunal below against whose order the leave to appeal is sought for in this petition.

5. **GROUND:**

Leave to Appeal is sought for on the following grounds:

- A. Because, the impugned order dated 11.12.2025 to the extent it directed reframing of antithetical charges in the alternative is incorrect, contrary to law and facts and hence unsustainable in view of the following grounds which are independent and without prejudice to each other.
- B. Because, the Hon'ble High Court having correctly held that charges under Sections 406 and 420 IPC cannot co-exist and are antithetical, fell into fundamental error by directing that they be re-framed in the alternative. The direction is contrary to the settled law of this Hon'ble Court. Once two charges are found to be antithetical and mutually exclusive, the court must neither frame those charges together nor in the alternative and shall cause prejudice. The direction to frame in the alternative merely perpetuates the legal error in a different form.
- C. Because once the Hon'ble High Court concluded that simultaneous framing of charges under Sections 406 and 420 IPC was impermissible in law, The Hon'ble High Court could not, after recording such categorical finding, preserve both offences in an alternative form, as such direction effectively perpetuates the same illegality which the impugned judgment purported to remedy.
- D. Because, the Hon'ble High Court has committed a grave error in directing alternate framing of charges without construing the judgment in *Delhi Race Club (Supra)* in its true context.

- E. Because, Section 221 Cr.P.C. permits alternative charges only where it is uncertain which of several legally possible offences is made out on the same acts. It does not contemplate charging in the alternative where the two offences rest on diametrically opposite factual matrices. Since Sections 406 and 420 cannot both apply to the same transaction, they cannot be charged in the alternative. The High Court's direction to frame charges in the alternate is contrary to the scheme of the Code and the settled law of this Hon'ble Court.
- F. Because, the charges reframed pursuant to the Hon'ble High Court's direction places the Petitioner in the position of having to simultaneously answer contradictory factual premises. This impairs the Petitioner's ability to prepare and present a coherent defense and violates his right to a fair trial guaranteed under Article 21 of the Constitution of India.
- G. Because, the direction to reframe charges in the alternate by the Hon'ble High Court is completely perverse, incorrect and bad in law.
- H. Any other grounds which this Hon'ble may deem fit in the circumstances of the present case.

**6. GROUNDS FOR INTERIM RELIEF:**

- A. BECAUSE the Petitioner would be unduly prejudiced if the impugned order is allowed to stand and the trial continues pursuant to the reframed antithetical alternative charges as the charge is unclear and ambiguous. The Petitioner is confident of a positive outcome in the present Special Leave Petition and no prejudice

would be caused if the interim relief as prayed for herein is granted.

- B. BECAUSE the balance of convenience is in the favour of the Petitioner to grant the interim relief as prayed herein and on the other hand no prejudice would be cause to the Respondent in allowing the prayer for interim relief.

7. **MAIN PRAYER:**

It is, therefore, most respectfully prayed that in the aforesaid facts and circumstances, this Hon'ble Court may be pleased to:

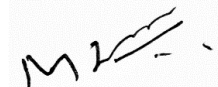
- a) grant special leave to appeal against the Final judgment and order dated 11.12.2025 passed by the High Court of Bombay Bench at Aurangabad in Criminal Revision Application No.366 of 2025; and
- b) pass such other and further order(s) as this Hon'ble Court may deem fit and proper.

8. **PRAYER FOR INTERIM RELIIEF:**

It is, therefore, most respectfully prayed that in the aforesaid facts and circumstances, this Hon'ble Court may be pleased to:

- a) grant ad-interim ex-parte stay of the proceedings in RCC No.398/2002 pending before Additional Chief Judicial Magistrate, Osmanabad; and
- b) pass such other and further order(s) as this Hon'ble Court may deem fit and proper.

FILED BY:



DRAWN ON: 11.05.2026  
FILED ON: 13.05.2026.

**[MILIND KUMAR]**  
Advocate for the Petitioner(s)

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
Special Leave Petition (Crl.) No. \_\_\_\_\_ of 2026

IN THE MATTER OF:

Sanjay Hariram Agarwal

...Petitioner

Versus

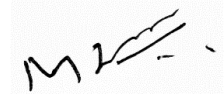
The State of Maharashtra

...Respondent

**CERTIFICATE**

Certified that the Special Leave Petition is confined only to the pleadings before the Court/Tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This Certificate is given on the basis of the instructions given by the Petitioner/Persons authorized by the Petitioner whose affidavit is filed in support of the S.L.P.

Filed by:



(MILIND KUMAR)  
Advocate for the Petitioner

Filed on: 13.05.2026

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**

**SPECIAL LEAVE PETITION (Crl.) NO. \_\_\_\_\_ OF 2026**

IN THE MATTER OF

Sanjay Hariram Agarwal

...Petitioner

Versus

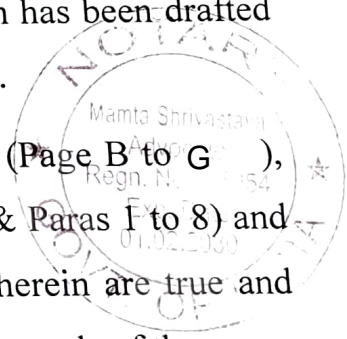
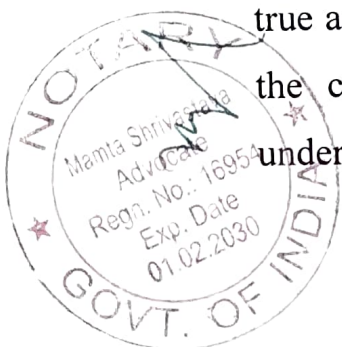
The State of Maharashtra

...Respondent

**AFFIDAVIT**

I, Sanjay Hariram Agarwal S/o Shri Hariram Agarwal, aged about 60 Years, Occu.: Business, R/o 7 Hari Sava Street, Kidderpore, Kolkata700023, West Bengal, presently at New Delhi, do hereby solemnly affirm and state as here under: -

1. That I am the petitioner in the above-mentioned Special Leave Petition and as such well conversant with the facts and circumstances of the case and hence competent to swear this affidavit.
2. That the aforesaid Special Leave Petition has been drafted on my instructions based on records of the case.
3. That I have read over the List of Dates (Page B to G), Special Leave Petition (Pages 12 to 20 & Paras 1 to 8) and have understood the same. The facts stated therein are true and correct to my knowledge and belief based on records of the case.
4. That the facts stated in the accompanying applications are true and correct to my knowledge and belief based on records of the case. I have read over the said applications and have understood the contents of the same.



5. That the annexures annexed therewith is/are the true copy/copies of its respective originals.

S. Marwal  
DEPONENT

**VERIFICATION:**

I, the above-named deponent, do hereby verify that the contents of the above affidavit from paragraphs 1 to 5 are true and correct to my knowledge and belief and nothing false is stated herein and nothing material has been concealed therefrom.

12 MAY 2026  
Verified at New Delhi on this 12<sup>th</sup> day of May, 2026.

*Identify the deponent/attestant who has signed in my presence.*

S. Marwal  
DEPONENT



ATTESTED  
MAMTA SHRIVASTAVA  
Notary Delhi R-18954  
Government of India  
Supreme Court of India Complex, New Delhi  
Mobile No. 800872864  
Register P.C. S.I. No. 16

ATTESTED

NOTARY PUBLIC  
(DELHI INDIA)

12 MAY 2026

## **APPENDIX**

### **Under Section 420 of IPC**

Section 420 of the Indian Penal Code (IPC) deals with cheating and dishonestly inducing someone to deliver property, valuable security, or convert something into valuable security. It is a serious, cognizable, and non-bailable offense that carries a punishment of up to 7 years imprisonment and a fine.

### **Under Section 406 of IPC**

Section 406 of the Indian Penal Code (IPC) prescribes punishment for "criminal breach of trust," defined under Section 405. It applies when someone dishonestly misappropriates, converts to their own use, or disposes of property entrusted to them in violation of a legal contract

### **Under Section 120B of IPC**

Section 120B of the Indian Penal Code (IPC) prescribes the **punishment for criminal conspiracy**, which is defined in Section 120A as an agreement between two or more persons to commit an illegal act or a legal act by illegal means. It makes the agreement itself a punishable offense, even if the planned crime is not executed.

True Copy

**FIRST INFORMATION REPORT****(Under Section 154 Cr. P.C)**

1. Dist. Osmanabad, PS. Osmanabad, FIR No. 106/2002, Year 2002,  
Date: 08/05/2002
2. (i) \*Act - IPC Section:- 406, 409, 420, 34.  
(ii) \*Act -                      \*Section -  
(iii) Other Acts and Sections \_\_\_\_\_.
3. Occurrence of Offence: (Tick applicable portion) Day August\* Date  
From 01-02-2002 to Till Time  
\*Date to till date                      Time .....
- (b) Information received at P.S. Date 08/05/2002 (Complaint Application)  
\*Time 19.00
- (c) General Diary Reference :  
Entry No(s) 128/02 \*Time 19:00
4. Type of Information : Noteworthy  
Written/Oral -
5. Place Of Occurrence : (a) \* Direction and Distance from P.S - 01 Km.  
Beat No. :
- (b) Address of Occurrence Name : Osmanabad District Central Sahkari  
Bank Ltd. Osmanabad, Along the Road from Osmanabad to Tuljapur.
- (c) In case, outside the limit of the Police Station \_\_\_\_\_ Taluka \_\_\_\_\_  
Dist. \_\_\_\_\_ State
6. Complainant/ Informant Permanent Address
- (a) Name:- Mr. Bali
- (b) Father's/Husband's Name: Mr. Parasram Rathod
- (c) Date/Year of Birth: 46 years  
Nationality: Indian
- (e) Passport No.    Date of Issue    Place of Issue    Occupation: Divisional  
Assistant Registrar  
Cooperative Society Latur
- (g) Religion :                      Caste:

h) Address:

7. Details Name and Address of known Accused (Attaché separate sheet, if Necessary) (If suspect particular of physical feature write on form 1-B of attach FIR 1-B to Case Diary):

1. Bhupal Singh alias Pawan Santajirao Rajenibanalkar Res. Chairman Osmanabad District Cooperative Bank Ltd. Osmanabad.

2. Home Traders Vashi, Navi Mumbai-

Physical features, characteristics and deformities and other details of the suspect :

Gender	Date Of Birth	Build	Height in Cms.	Complexion	Identification Mark(s)
1	2	3	4	5	6

Deformities/Peculiarities	Teeth	Hair	Eye	Habit	Dress Habits
7	8	9	10	11	12

language /Dialect	Place of				
	Burn Marks	Leucoder ma	Mole	Scar	Tattoo
13	14	15	16	17	18
--	---	--	--	--	--

These fields will be entered only if complaint / informant given any one or more

particulars about the suspect / accused. This will be used only for the purpose of preliminary retrieval to assist I.O.

A database created will subsequently link one suspect in several cases, if any.

A comprehensive and complete data on all fields will again be prepared when any accused arrested irrespective of previous suspicion.

8. Reasons for delay in reporting by the complainant/informant:  
 9. Particulars of properties stolen and involved (Attach separate sheet if necessary) :  
 10. A) Total value of properties stolen/involved :  
 11. Inquest Report/U.D. Case no., if any

12. F.I.R. Contents (Attach separate sheets, if required) : At the above mentioned time and place, the accused withdrew Rs. 30000000 from Nagpur District Central Cooperative Bank on 31.1.2002. Maharashtra State Cooperative Bank, Mumbai, deposited Rs. 30 crore in the current account of Osmanabad Bank, out of which Rs. 299934591 was given to Home Traders, Vashi, Mumbai, through this agency, to purchase government bonds. After purchasing the bonds, the bank did not give receipts.

13. Action taken: Since the above information reveals commission of offence(s) u/s as mentioned at item no. 2 :

1. Registered the case and took up the investigation or Directed :  
 B.B.Reddy  
 Rank : PI Osmanabad No. .... to take up the investigation or.
2. Refused investigation due to :
3. Transferred to P.S. ....

District - on point of jurisdiction.

F.I.R. read over to the complaint/informant, admitted to be correctly recorded and a copy given to the complainant/informant, free of cost.

14. Signature/Thumb Signature of the Office-in-  
 impression Of the charge, Police Station

Complainant/Informant Name: B.B. Reddy

Rank- Sub Inspector of Police

15. Date & Time of Posting Code No. of I.O.:  
 dispatch to the court :

Today, we, the complainant, while we were present at the Thane Police Station, filed a written complaint. In it, as follows:

Sub: Regarding registering a case against the Chairman of Osmanabad District Central Cooperative Bank, Osmanabad, Mr. Bhupal Singh alias Pawan Sambhajirao Rajenimbalkar, regarding the transaction of Rs. 299934591.00.

In accordance with the above subject, we submit a detailed complaint that, in this office letter No. Administration/District Central Cooperative

Bank/Financial Mismanagement/819 /32 dated 26.4.2002, regarding the embezzlement of Rs. 299934591.00 from Osmanabad District Central Cooperative Bank, Mr. L.M. Pawar, as per the Accounts Circular, Class 1 Cooperative Bank, Latur, was authorized to inspect. He inspected the said bank on 29.11.2002. In the said investigation, he has stated that from Nagpur District Central Cooperative Bank on 31.1.2002, Rs. 30 crore was deposited in the current account of Maharashtra State Cooperative Bank, Mumbai, from Osmanabad District Central Cooperative Bank. Rs. 299934591.00 was given to Home Traders Vashi, Navi Mumbai, on 1.2.2002 to purchase Marfaj Government Bonds. The said transaction was done by the Chairman of the bank, Shri. Bhupal Singh alias Pawan Santajirao Rajenimbalkar, over the phone. He did not give receipts to the bank after purchasing the bonds. Therefore, Rs. 299934591.00 was given as a gift. The Chairman of the bank, Shri. Bhupah Singh alias Pawan Sambhajirao Rajenimbalkar, is personally responsible for it. Shri. L.M. Pawar Special Auditor Class 1 Cooperative Bank Latur has attached the report.

Against the Chairman of the Osmanabad District Central Bank, Bhupal Singh alias Pawan Santajirao Rajenimbalkar, who caused loss to the bank and cheated it by giving a gift of Rs. 299934591.00, I am filing a police complaint against him for registering a case against him.

Extract  
Submitted to the Court  
Osmanabad

Present  
Police Inspector  
Osmanabad (City)

True Translated Copy

call 3  
R.C.C.No. 398/2002.  
State/Pawanraje & others.  
Exh. No. 641

In view of order dt. 6/5/2014 below Exh. 1 the following charge is framed.

CHARGE

I, C.P.Gaddam, Chief Judicial Magistrate, Osmanabad hereby charge you accused -

3. Vinayak Digambar Malvade.  
Age 67 years, Occu. Retired.  
R/o. Saraswati Niwas, Patel Chowk, Teli Galli, Latur.
4. Harischandra Kashinath Tambe.  
Age 63 years, Occu. Service.  
R/o. Veer Sawarkar Chowk, Shalu Galli, Bhoom, Tq. Bhoom, Dist. Osmanabad.
5. Shivaji Bhaurao More.  
Age 67 years, Occu. Service.  
R/o. At Post Talmod, Tq. Omerga, Dist. Osmanabad.  
At present resident of B/22, "Swapnakunj", Rajiv Gandhi Nagar, Osmanabad.
7. Sanjay Hariram Agarwal.  
Age 48 years, Occu. Business.  
R/o. 7 Harisabha Street, Khedarpur, Calcutta-23.
8. Subodh Chand Dayal Bhandari.  
Age 48 years, Occu. Chartered Accountant.  
R/o. Flat No.402, Aprodite Co-op- Society, Devnar village road, Chembur, Mumbai 400 088. (within Govandi Police Station).
9. Nandkishor Shankarlal Trivedi.  
Age 46 years, Occu. Advocate.  
R/o. 3-A, Pushpam, 6 Khandubhai Desai Road, Vile Parle, (West), Mumbai, 56. (within Juhu Police Station)

*[Handwritten signature]*

// 2 //

10. Sunil Chhatrapal Kedar.  
Age 53 years, Occu. Service.  
R/o. Nagpur.

as follows -

1. That you accused above named along with deceased accused No.1 Bhupalsing @ Pawan Santajirao Rajenimbalkar, Chairman, Osmanabad District Central Co-operative Bank Ltd. Osmanabad, deceased accused No.2 Arun Jivanrao Deshpande and deceased accused No.6 Babu Nivrutti Thorat, Main Officers of said Bank, on or about 29/1/2002 at Osmanabad and Mumbai had agreed to do or cause to be done an illegal acts, namely, criminal breach of trust, making false documents, using them as genuine documents and ultimately to cheat the said O.D.C.C.Bank for Rs. 30 crores and besides the above agreement, did acts i.e. committed criminal breach of trust, cheated said Bank in pursuance of such agreement etc. and thereby committed offence punishable u/s. 120B of Indian Penal Code and within my cognizance.

2. That you accused Nos. 3 to 5 and deceased accused Nos. 1, 2 and 6 on or about 1/2/2002 at Osmanabad, being officers of O.D.C.C.Bank and in the way of business as bankers, were having dominion over Rs. 30 crores received from Nagpur District Central Co-operative Bank Ltd., Nagpur as a deposit, in furtherance of common intention of you accused Nos. 1 to 6, committed criminal breach of trust in respect of said 30 crores and thereby committed offence punishable under section 409 r/w. 34 I.P.C. and within my cognizance.

3. That you accused Nos. 7 to 9 being Directors or office bearers of Home Trade Ltd. Washi, New Mumbai, a company unauthorizedly dealing with Government Securities, on or about 1/2/2002 at Mumbai, being entrusted with 30 crores by Osmanabad District Central Co-operative Bank Ltd. Osmanabad for purchasing Government Securities, in furtherance of your common intention and in furtherance of common intention with accused No.10,



4/2/04

// 3 //

R.C.C.No. 398/2002.  
State/Pawanraje & others.

committed criminal breach of trust in respect of said Rs. 30 crores and thereby committed an offence punishable under section 406 r/w. 34 IPC and within my cognizance.

That you accused Nos. 7 to 9 during the period from February to May 2002 at Mumbai, in furtherance of your common intention, forged certain documents, viz, contract notes in respect of Government Securities, namely, Bihar SDL 2110, Sikkim 2090, Nagaland 2007, M.P. SDL 2007 and M.P. SDL, total worth Rs. 29,99,34,591/- intending that they shall be used for the purpose of cheating Osmanabad District Central Co-operative Bank Ltd. Osmanabad and thereby committed an offence punishable under section 468 r/w. 34 IPC and within my cognizance.

5. That you accused Nos. 7 to 9 during the period from February to May 2002 at Osmanabad and Mumbai, in furtherance of your common intention, fraudulently and/or dishonestly used as genuine the aforesaid contract notes which you knew or had reason to believe, at the time when you used it, to be forged documents and thereby committed an offence punishable under section 471 r/w. 34 IPC and within my cognizance.

6. That you accused Nos. 3 to 5 and deceased accused Nos. 1, 2 and 6 after two meetings of Board of Directors of Osmanabad District Central Co-operative Bank Ltd. Osmanabad held on 8/2/2002 and 11/3/2002 respectively at Osmanabad, in furtherance of your common intention, forged certain documents, viz, Proceeding Register of said meetings showing discussion and passing of resolution on the subject of purchase of Government Securities through Home Trade and approval to that purchase when, in fact, no such discussion was held nor passed any such resolution, and said forged documents was with an intention that they shall be used for the purpose of cheating and thereby committed an offence punishable under section 468 r/w. 34 IPC and



// 4 //


within my cognizance.

7. That you accused Nos. 3 to 5 and deceased accused Nos. 1, 2 and 6 after above meetings dated 8/2/2002 and 11/3/2002 at Osmanabad in furtherance of your common intention, fraudulently and/or dishonestly used as genuine the aforesaid Proceeding Register of said two meetings which you knew or had reason to believe, at the time when you used it, to be forged document and thereby committed an offence punishable under section 471 r/w. 34 IPC and within my cognizance.

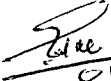
8. That you accused Nos. 3 to 5 and 7 to 10 on or about 1/2/2002 along with deceased accused Nos. 1, 2 and 6 at Osmanabad and/or Mumbai, in furtherance of common intention of you all accused including deceased accused, defrauded and cheated Osmanabad District Central Co-operative Bank Ltd. Osmanabad, by fraudulently and/or dishonestly inducing the said bank to deliver 30 crores belonging to that bank and thereby committed an offence punishable under section 420 r/w. 34 IPC and within my cognizance.

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

Date:- 8/5/2014.

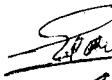
  
 8/5/2014  
 (C.P. Gaddam),  
 Chief Judicial Magistrate,  
 Osmanabad.

In view of order passed today below Exh:1  
 the contents to above charge are read  
 over and explained to accused nos. 3 to 5  
 and 7 to 9 to which they pleaded not guilty.

  
 8/5/2014  
 C.M.

Today the contents to above charge are  
 read over and explained to accused no. 10  
 Sunil Kedar to which he pleaded not guilty.

True Copy

  
 9/5/2014

**(2024) 10 Supreme Court Cases 690 : (2025) 1 Supreme Court Cases (Cri) 281 : 2024 SCC OnLine SC 2248**

**In the Supreme Court of India**

(BEFORE J.B. PARDIWALA AND MANOJ MISRA, JJ.)

DELHI RACE CLUB (1940) LIMITED AND OTHERS . .

Appellants;

*Versus*

STATE OF UTTAR PRADESH AND ANOTHER . .

Respondents.

Criminal Appeal No. 3114 of 2024<sup>±</sup>, decided on August 23, 2024

**A. Penal Code, 1860 — Ss. 406 and 420 — Criminal breach of trust and cheating — Distinction between ingredients required for constituting both offences, stated — Nyaya Sanhita, 2023, Ss. 316(2) and 318(4)**

**(Paras 36, 37 and 43)**

*S.W. Palanitkar v. State of Bihar*, (2002) 1 SCC 241 : 2002 SCC (Cri) 129;  
*Harmanpreet Singh Ahluwalia v. State of Punjab*, (2009) 7 SCC 712 : (2009) 3 SCC (Cri) 620, *followed*

**B. Penal Code, 1860 — S. 406 — Criminal breach of trust — Applicability of — Permissibility in case of sale — Held, in case of a sale, S. 406 goes out of the picture — Nyaya Sanhita, 2023 — S. 316(2) — Contract and Specific Relief — Sale of Goods Act, 1930, Ss. 20 and 24**

**(Paras 44 and 49)**

*Lalit Chaturvedi v. State of U.P.*, (2024) 12 SCC 483 : 2024 SCC OnLine SC 171, *followed*

*Mideast Integrated Steels Ltd. v. State of Jharkhand*, 2023 SCC OnLine Jhar 301, *approved*

**C. Penal Code, 1860 — Ss. 406 and 420 — Breach of contract and criminal breach of trust and cheating — Distinction between, held, a fine one and same stated — Nyaya Sanhita, 2023, Ss. 316(2) and 318(4)**

**(Paras 41 and 42)**

**D. Penal Code, 1860 — Ss. 405 and 406 — Act of breach of trust — Whether by itself may result in a penal offence of criminal breach of trust — Held, every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation — Further held, an act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives**

**rise to a criminal prosecution as well – Words and Phrases – “Breach of trust”, “criminal breach of trust” – Nyaya Sanhita, 2023, Ss. 316(1) & (4)**  
**(Para 39)**

*Hari Prasad Chamaria v. Bishun Kumar Surekha*, (1973) 2 SCC 823 : 1973 SCC (Cri) 1082, *followed*

**E. Penal Code, 1860 – S. 406 r/w Ss. 415 and 420 r/w S. 415 – Commission of offence of criminal breach of trust – Whether by itself, can be a ground for holding commission of offence of cheating – Held, if complainant claims that offence of criminal breach of trust as defined under S. 405, punishable under S. 406, is committed by the accused, then in the same breath it cannot be said that the accused also committed the offence of cheating as defined and explained in S. 415, punishable under S. 420 – Nyaya Sanhita, 2023, S. 316(2) r/w Ss. 318(1) & (4) r/w S. 318(1)**  
**(Para 38)**



Page: 691

**F. Penal Code, 1860 – Ss. 406, 420 and 120 – Ingredients of criminal breach of trust and cheating explained and the two offences distinguished – Quashing of summoning order – Absence of requisite ingredients attracting alleged crime, as factor**

– Offence allegedly committed by Company – A-2, the Secretary and A-3 Honorary President and Non-Executive Director of the Company allegedly purchased grains from the complainant, but stopped payment for the same – Although, complaint filed for offences under Ss. 406, 420 and 120-B, the ACJM took cognizance and issued process only for offence under S. 406

– Held, summoning of an accused in a criminal case being a serious matter, summoning order must reflect that the Magistrate while issuing process applied its mind to the facts of the case and the law applicable thereto – Further, the Magistrate, held, required to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof

– Further held, when offence allegedly is committed by the company, vicarious liability cannot be attributed to A-2 and A-3, the office-bearers of the Company – Thus A-2 and A-3 being the office-bearers, held, could be arrayed as accused only if direct allegations are levelled against them – Further held, vicarious liability of the office-bearers would arise provided any provision exists in that behalf in the statute – Even for the said purpose, the complainant, held, required to make requisite allegations for attracting the provisions constituting vicarious liability

– Further, there held a distinction between criminal breach of trust and cheating – For cheating, criminal intention, held, necessary at the time of making a false or

misleading representation i.e. since inception — In criminal breach of trust, mere proof of entrustment, held, sufficient — Thus, in case of criminal breach of trust, the offender, held, is lawfully entrusted with the property, and he dishonestly misappropriated the same — However, 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

— Indisputably there found no entrustment of any property to the appellants — Even the complainant also did not claim that any property was lawfully entrusted to the appellants and that the same dishonestly misappropriated — Complainant simply claimed non-payment of price of the goods sold by him — Held, once there is a sale, S. 406, held, goes out of picture, because there needs to be some entrustment of property to the accused wherein the ownership is not transferred to the accused — In case of sale of movable property, although the payment may be deferred yet the property in the goods passes on delivery as per Ss. 20 and 24, respectively, of the Sale of Goods Act, 1930

— Resultantly, at the most, the trial court, held, could have issued process for the offence of cheating but in any circumstances no case of criminal breach of trust is made out — Further held, even if the Magistrate would have issued process for the offence of cheating, the same would have been liable to be quashed and set aside, because none of the ingredients to constitute the offence of cheating disclosed from the materials on record



Page: 692

— Thus, plain reading of the complaint did not spell out any of the requisite ingredients of both offences i.e. criminal breach of trust under S. 406 and cheating under S. 420 — Further held, if complainant claims that offence of criminal breach of trust is committed by the accused, then in the same breath it cannot be said that the accused also committed the offence of cheating — Further, the complainant having claimed that a particular amount is due and payable to him, he should have filed a civil suit for recovery of the amount against the appellants — Resultantly, continuation of the criminal proceeding, held, nothing but abuse of the process of law and, therefore, prayer for quashing allowed — Nyaya Sanhita, 2023 — Ss. 316 (2) & (4) — Contract and Specific Relief — Sale of Goods Act, 1930 — Ss. 20 and 24 — Criminal Procedure Code, 1973 — Ss. 200, 202, 204 and 482 — Nagarik Suraksha Sanhita, 2023, Ss. 223, 225, 227 and 528

**(Paras 23 to 57)**

*Held :*

The expression "*entrusted with property*" used in Section 405 IPC connotes that the property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or that the

beneficial interest in or ownership thereof must be in the other person and the offender must hold such property in trust for such other person or for his benefit.

(Para 47)

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.

(Para 49)

*Legal Remembrancer v. Abani Kumar Banerji*, 1950 SCC OnLine Cal 49; *R.R. Chari v. State of U.P.*, 1951 SCC 250; *State of Gujarat v. Jaswantlal Nathalal*, 1967 SCC OnLine SC 58; *Velji Raghavji Patel v. State of Maharashtra*, 1964 SCC OnLine SC 185; *Jaswantrai Manilal Akhaney v. State of Bombay*, 1956 SCC OnLine SC 46; *CBI v. Duncans Agro Industries Ltd.*, (1996) 5 SCC 591 : 1996 SCC (Cri) 1045, *followed*

*Delhi Race Club (1940) Ltd. v. State of U.P.*, 2024 SCC OnLine All 4393, *reversed*

**G. Penal Code, 1860 – Ss. 406 and 420 – Criminal breach of trust and cheating – Duty of Magistrate while dealing with private complaint and duty of police, when case arises from FIR – While dealing with a private complaint, the Magistrate, held, required to meticulously examine the contents of the complaint for determining, whether the alleged offences are made out from the averments made in the complaint – However, when a case arises from a FIR, police, held, required to thoroughly ascertain whether the allegations levelled by the informant indeed fall under the category of cheating or criminal breach of trust – Nyaya Sanhita, 2023 – Ss. 316(2) and 318(4) – Criminal Procedure Code, 1973 – Ss. 154 and 200 – Nagarik Suraksha Sanhita, 2023, Ss. 173 and 223**

(Para 54)

*Held :*

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.

(Para 54)

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 vis-à-vis 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 IPC (now BNS, 2023) are not twins that they cannot survive without each other.

(Para 55)

**H. Criminal Procedure Code, 1973 — Ss. 202 and 204 — Issuance of process — Requirements of — Scope of inquiry under S. 202 — Law clarified**

— While issuing process, the court, held, not required to determine whether the accused will be ultimately convicted or acquitted, but to determine whether there are sufficient grounds for proceeding further or not — Held, mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail — Rather, such grounds, held, may indicate the need for proceeding further in order to discover the truth after a full and proper investigation

— If, however, a bare perusal of a complaint or the evidence led in support of it shows absence of essential ingredients of the offences alleged or that the dispute appears only of a civil nature or that there appear such patent absurdities in evidence that it would be a waste of time to proceed further, then of course, the complaint, held, liable to be dismissed at that stage only

— Further, the Magistrate, held, not required to determine the correctness or the probability or improbability of individual items of evidence on disputable grounds — Rather, the Magistrate, held, required to determine existence or otherwise of a prima facie case on the assumption that what is stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true — Further, while issuing process, the Magistrate, held, not entitled to enter into a detailed discussion of the merits or demerits of the case — Even, the High Court also, held, not empowered to go into this matter in its inherent jurisdiction which is to be sparingly used — Nagarik Suraksha Sanhita, 2023, Ss. 225 and 227

**(Paras 12 to 15)**

*Held :*

The scope of the inquiry under Section 202 CrPC is extremely limited — only to the ascertainment of the truth or falsehood of the allegations made in the complaint — (i) on the materials placed by the complainant before the Court, (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the point of view

of the complainant without at all adverting to any defence that the accused may have.

(Para 15)

*D.N. Bhattacharjee v. State of W.B.*, (1972) 3 SCC 414 : 1972 SCC (Cri) 564, followed

**I. Criminal Procedure Code, 1973 — S. 204 r/w S. 202 — Issuance of process — Requirements of and duty of Magistrate — Held, issuance of summons being a serious matter should not be done mechanically and it should be done only upon satisfaction on the ground for proceeding further in the matter against a person concerned based on the materials collected during the inquiry — Duty of Magistrate while summoning accused, reiterated — Nagarik Suraksha Sanhita, 2023, S. 227 r/w S. 225**

**(Paras 31 and 32)**

*Held :*

The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction. ... To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.

(Para 31)

*Mehmood Ul Rehman v. Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124, followed

**J. Criminal Procedure Code, 1973 — Ss. 202 and 204 — Issuance of process — Right of accused in proceedings under S. 202 CrPC — Held, the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not — Nagarik Suraksha Sanhita, 2023, Ss. 225 and 227**

**(Para 16)**

**K. Criminal Procedure Code, 1973 — Ss. 202 and 204 — Issuance of process — Interference with discretion exercised by the Magistrate by superior court — When permissible — Law clarified**

— Held, in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the

allegations — However, there held appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him — Discretion given to the Magistrate on this behalf, held, has to be judicially exercised by him — Once the Magistrate has exercised his discretion, the High Court or even the Supreme Court, held, cannot substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in the conviction of the accused — Nagarik Suraksha Sanhita, 2023, Ss. 225 and 227

**(Para 16)**

**L. Criminal Procedure Code, 1973 — Ss. 204 and 482 — Summoning by Magistrate — Interference by exercising inherent powers — Permissibility and duty of High Court — Law clarified**

— Petition for quashing summoning order, held, maintainable — Further, the High Court, held, liable to determine as to whether the Magistrate applied his mind to form an opinion as to the existence of sufficient ground for proceeding further and in that regard to issue summons to face the trial for the offence concerned — Expression “sufficient grounds for proceeding”, held, means that there should be sufficiency of materials against the accused concerned before proceeding under S. 204 — Resultantly, summoning order, held, must be supported by reason while concluding existence of prima facie case against the accused — However, the order, held, need not contain detailed reasons — A fortiori, the order, held, would be bad in law if the reason given turns out to be ex facie incorrect — Nagarik Suraksha Sanhita, 2023, Ss. 225 and 528

**(Paras 33 and 34)**

*Held :*

The words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.


(Para 34)

*Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400; *Bhushan Kumar v. State (NCT of Delhi)*, (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872; *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687, *followed*

**M. Criminal Procedure Code, 1973 — Ss. 204 and 482 — Quashing of process — Illustrations as to when the order of Magistrate issuing process against the accused can be quashed or set aside, enumerated — Nagarik Suraksha Sanhita, 2023, Ss. 225 and 528**

**(Para 17)**

*Nagawwa v. Veeranna Shivalingappa Konjalgi*, (1976) 3 SCC 736 : 1976 SCC (Cri) 507, followed

 Page: 696

**N. Criminal Procedure Code, 1973 — S. 156(3) r/w S. 155(2) — Direction for police investigation — Exercise of power under S. 156(3) — Whether permissible before taking cognizance — Held, the power under S. 156(3) can be exercised by a Magistrate even before he takes cognizance provided the complaint discloses the commission of cognizable offences — However, if the complaint does not disclose commission of cognizable offences, such an order of the Magistrate directing investigation is liable to be quashed — Nagarik Suraksha Sanhita, 2023, Ss. 175(3) and 174**

**(Para 28)**

*Tilak Nagar Industries Ltd. v. State of A.P.*, (2011) 15 SCC 571 : (2012) 4 SCC (Cri) 645; *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426, followed

Appeal allowed

SK-D/71753/CR

Advocates who appeared in this case :

Suhail Dutt, Senior Advocate [Azhar Alam, Sankalp Goswami and Ms B. Vijayalakshmi Menon (Advocate-on-Record), Advocates], for the Appellants;

Rajat Singh (Advocate-on-Record), Neeraj Kr. Sharma and Sarthak Chandra, Advocates, for the Respondents.

**Chronological list of cases cited**

**on page(s)**

1. (2024) 12 SCC 483 : 2024 SCC OnLine SC 171,  
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2. 2024 SCC OnLine All 4393, *Delhi Race Club (1940) Pvt. Ltd. v. State of U.P. (reversed)* 714f
3. 2023 SCC OnLine Jhar 301, *Mideast Integrated Steels Ltd. v. State of Jharkhand* 713e-f

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4. (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124,  
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  5. (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687, *Sunil Bharti Mittal v. CBI* 708b
  6. (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872,  
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  7. (2011) 15 SCC 571 : (2012) 4 SCC (Cri) 645, *Tilak Nagar Industries Ltd. v. State of A.P.* 706c-d
  8. (2009) 7 SCC 712 : (2009) 3 SCC (Cri) 620,  
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  9. (2002) 1 SCC 241 : 2002 SCC (Cri) 129, *S.W. Palanitkar v. State of Bihar* 708d-e, 709d
  10. (1998) 5 SCC 749 : 1998 SCC (Cri) 1400, *Pepsi Foods Ltd. v. Special Judicial Magistrate* 705a, 707g
  11. (1996) 5 SCC 591 : 1996 SCC (Cri) 1045, *CBI v. Duncans Agro Industries Ltd.* 712b
  12. 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426,  
*State of Haryana v. Bhajan Lal* 706e
  13. (1976) 3 SCC 736 : 1976 SCC (Cri) 507,  
*Nagawwa v. Veeranna Shivalingappa Konjalgi* 703d-e, 703e-f, 713f
  14. (1973) 2 SCC 823 : 1973 SCC (Cri) 1082, *Hari Prasad Chamaria v. Bishun Kumar Surekha* 710a-b
  15. (1972) 3 SCC 414 : 1972 SCC (Cri) 564, *D.N. Bhattacharjee v. State of W.B.* 702g
  16. 1967 SCC OnLine SC 58, *State of Gujarat v. Jaswantlal Nathalal* 711f

17. 1964 SCC OnLine SC 185, <i>Velji Raghavji Patel v. State of Maharashtra</i>	711g
18. 1956 SCC OnLine SC 46, <i>Jaswantrai Manilal Akhaney v. State of Bombay</i>	712a
19. 1951 SCC 250, <i>R.R. Chari v. State of U.P.</i>	706c-d
20. 1950 SCC OnLine Cal 49, <i>Legal Remembrancer v. Abani Kumar Banerji</i>	705d-e



The Judgment of the Court was delivered by

**J.B. PARDIWALA, J.**— This appeal arises from the order passed by the High Court of Judicature at Allahabad dated 3-4-2024<sup>1</sup> in Application No. 15453 of 2023 filed by the appellant herein by which, the High Court rejected the same and thereby declined to quash and set aside the summoning order dated 28-2-2023 passed by the Additional Chief Judicial Magistrate, Khurja, Bulandshahar in Complaint Case No. 547 of 2021.

**2.** Facts giving rise to this appeal may be summarised as under.

**3.** Respondent 2 herein is the original complainant. He lodged a private complaint in the Court of the Additional Chief Judicial Magistrate, Khurja, Bulandshahar against the appellants herein for the offence punishable under Sections 406, 420 and 120-B, respectively, of the Penal Code, 1860 (for short "IPC").

**4.** The complaint reads thus:

"It is most respectful that the applicant Vipin Kumar Agarwal, son of late Shri Bhagwat Swaroop Agarwal, who is the owner of a firm Agarwal Udyog, New Mandi, Khurja. The applicant's firm used to supply horse feed, barley and oats to Delhi Race Club (1940) Ltd., New Delhi since 1990. In the year 1995, the then head of the Race Club, Shri P.S. VEDI and the then Secretary Sehgal told the applicant that from now on the bills for the supply of horse grain and oats would be made in the name of Delhi Horse Trainers Association, Race

Course Road, New Delhi. And the Head and Secretary of the same association have now been made separate, they will pay you for the goods supplied. Till the year 2017, the payment of the applicant's firm continued to be regular and now at present Delhi Horse Trainers Association President Kazim Ali Khan and Secretary Sanjeev Charan owe a payment of Rs 9,11,434 to the applicant's firm. Whenever the applicant makes demands, they keep evading when the applicant tried to talk to the current President of the Race Club, J.S. Vedi and the current Secretary about this. Then the Secretary G.S. Vedi said that you should demand your dues from Delhi Horse Trainers Association only, we have no relation with them, then the applicant tried to meet Kazim Ali Pradhan along with Manish Kumar Sharma, son of Mahesh Kumar Sharma, resident of Nawalpura Khurja and Chirag Agarwal, son of Vijay Agarwal, resident of Malpura, Khurja but they refused to talk to the applicant and threatened that if he came here again, it would be very bad and started a scuffle. The applicant feels that both the abovementioned officials of Delhi Race Club (1940) Ltd., New Delhi and Delhi Horse Trainers Association, in connivance with each other, cheated the applicant and dishonestly obtained the goods from the applicant's firm in bad faith and they used it for their club and association and now they do not want to pay for the goods given by the applicant. All of them under conspiracy want to grab the money of the applicant's firm, after which the applicant had given a legal notice to



the abovementioned people through his advocate on 18-6-2020 but even after receiving the notice, the above people neither gave any reply to the notice nor was the applicant's outstanding amount paid. In this context, the applicant gave an application to Inspector-in-charge of Kotwali Khurja Nagar on 25-7-2021 and on 6-8-2021, an application letter was sent to SSP Sir Bulandshahar through postal registry, but till date no action has been taken nor has the applicant's report been registered.

Therefore, it is prayed that after the investigation, please summon the accused along with evidence to the court and punish them for the crime committed by them.

Date : 27-8-2021"

**5.** The plain reading of the complaint would indicate that Appellant 1 is a legal entity. Appellant 2 is the Secretary of Appellant 1 Company, and Appellant 3 is the Honorary President and Non-Executive Director

of Appellant 1 Company. They used to purchase grains and oats from the complainant meant to be fed to the horses maintained by Appellant 1 Company. According to the complainant, an amount of Rs 9,11,434 (Rupees nine lakhs eleven thousand four hundred thirty-four) is due and payable to him by the appellants towards the sale of horse grains and oats over a period of time. It is alleged that as the appellants failed to make the payment, he thought it fit to file the complaint as according to him he has been cheated by the appellants.

**6.** The court concerned initially took cognizance upon the complaint but postponed the issuance of process as it thought fit to initiate magisterial inquiry under Section 202 of the Code of Criminal Procedure, 1973 (for short "the CrPC"). The statement of the complainant recorded by the Additional Chief Judicial Magistrate in the course of the magisterial inquiry under Section 202 CrPC reads thus:

"Name of the witness Ankit Agarwal, s/o Vipin Agarwal, aged about 34 years, occupation — businessman, resident of 13, Malpura, Subhash Road, Khurja, PS Khurja Nagar, District Bulandshahar today on 8-3-2022 on oath gave statement that : Vipin Kumar Agarwal is the owner of a firm Agarwal Udyog which is located in New Mandi Khurja. Delhi Race Course Club 1940 Ltd. has been purchasing horse feed from the abovementioned firm for a long time and payment for the same has been done on time. After the year 2017, Delhi Horse Trainers Association President Kazim Ali and Secretary Sanjeev Charan kept paying the goods. Since thereafter, the abovementioned people owe Rs 9,11,434 to the above firm. After repeated requests, both the abovementioned firms have been telling to make payment to each other but the opposite party has also not made the payment.

Delhi Race Course Club President J.S. Bedi and Secretary H.K. Uppal are delaying the payment of horse feed purchased by them. The people of the above two firms have colluded with each other and do not want to pay for the goods taken. Vipin Agarwal, proprietor of Agarwal Udyog, is my father hence I am aware of the entire matter."



**7.** The Magistrate also recorded the statement of one Manish Kumar in course of the inquiry under Section 202 CrPC. The statement reads thus:

"Witness name Manish Kumar Sharma, father's name ..., aged 33 years, occupation — labourer, resident of Nawalpura, Khurja Police Station, Khurja Nagar, District Bulandshahar today on 8-3-2022 on

oath gave statement that:

I have been working as a bookkeeper for the last 17 years at Vipin Kumar Agarwal's firm Agarwal Udyog, which is located in New Mandi Khurja. From the abovementioned firm, Delhi Race Course Club 1940 Ltd. which is a New Delhi based firm. Have been buying horse grain and oats. President of this firm J.S. Bedi and Secretary H.K. Uppal have been coming to our firm to buy horse feed and oats and the firm has been paying for the purchased goods. It was said by the above two that now the bills for horse feed and oats will be made in the name of Delhi Horse Trainers Association Delhi and the Head of this firm, Kazim Ali and Secretary Sanjeev Charan will pay it. On the request of the above people, horse grain and oats continued to be supplied from our firm. The abovementioned people owe Rs 9,11,434 to our firm, upon being repeatedly asked for payment, the abovementioned people are evading. Once Chirag Agarwal and I went to their office in New Delhi, they refused to talk to Vipin Agarwal and us and they threatened that if they come here again, it will be very bad and they started scuffle. The outstanding amount of Rs 9,11,434 has not yet been paid by the officials of the above two firms. The abovementioned people have fraudulently obtained the goods from our firm in bad faith and do not want to pay for the same. They have used the supplied goods. Certified after reading and listening."

**8.** At the end of the magisterial inquiry, the court issued process for the offence punishable under Section 406 IPC. The order issuing process reads thus:

"Date : 28-2-2023

The file was presented for orders. The complainant has been heard on the question of summons on an earlier date.

On behalf of the complainant Vipin Kumar Aggarwal, the above complaint was presented against the opposite parties Delhi Race Club, etc. to the effect that the firm of the complainant was supplying horse grain, barley and oats to Delhi Race Club since the year 1990. In the year 1995, the President of the Race Club, Mr P.S. Vedi and the then Sachin Sehgal ji said that the bill would be made in the name of Delhi Horse Trainers Association, Race Course Road, New Delhi and the Head and Secretary of the same association have now been made separately. They will make the payment for the goods given by you. Till the year 2017, the applicant's firm's payment continued to be regular and now at present the payment of Rs 9,11,434 is outstanding from the applicant's firm, when the applicant talked about this to the current President of the Race Club, J.S. Vedi and



the current Secretary then the secretary said that you should demand your dues from Delhi Horse Trainers Association only. Then the applicant tried to meet Kajim Ali but he refused to talk to the applicant and got into a scuffle. The above two associations and officials unanimously cheated the applicant and obtained goods from the applicant's firm and do not want to pay for the goods given by the applicant. The applicant had given a legal notice to the above people through his advocate on 18-6-2020 but even after receiving the notice, the above people neither gave any reply to the notice nor paid the outstanding amount of the applicant. In this context, the applicant gave an application to Khurja Nagar Police Station and on 6-8-2021 an application was given to SSP Bulandshahar but no action has been taken till date.

On behalf of the complainant, he got himself examined under Section 200 of the Code of Criminal Procedure and under Section 202 CrPC, the statement of witnesses Ankit Aggarwal as PW 1 and Manish Kumar Sharma as PW 2 was recorded. In which they supported the statements mentioned in the complaint. One copy of the application sent by the complainant to the Senior Superintendent of Police as documentary evidence in support of his statements, a photocopy of the registry receipt, one copy of the net receipt postal registry, five copies of the bill book, one true copy of the remaining balance, one copy of receipt of goods, one copy of remaining balance, one copy of legal notice were filed per receipt.

The complainant has stated in his statement under Section 200 CrPC, "after five years of 1990, these people said that we will not make the payment. A separate organisation has been formed for payment, which will do it. An organisation named Delhi Trainers Association has been formed. Now I owe these people nine lakhs eleven thousand four hundred thirty-four rupees. When we asked for money several times, we did not receive it. The President of Delhi Race Course is not ready to talk. I am suffering from cancer. Business is seen by children only. We also gave them legal notice but nothing happened."

Perused the entire evidence material available on file.

On the basis of the evidence presented by the complainant under Section 200 CrPC and Section 202 CrPC, there is prima facie basis for summoning the opposition parties Delhi Race Course Club, Delhi Race Horse Trainers Association, J.S. Bedi, H.K. Uppal, Kazim Ali Khan and Sanjeev Charan for consideration under Section 406 IPC.

There are sufficient grounds for summoning for trial of a punishable offence under Section 406 IPC.

ORDER

The opposite parties Delhi Race Course Club, Delhi Race Horse Trainers Association, J.S.Bedi, H.K. Uppal, Kazim Ali Khan and Sanjeev Charan are summoned for trial for the offence under Section 406 of the Penal Code. The complainant should process the summons against the opposition parties within a week, every summons should be issued along

 Page: 701

with a copy of the complaint letter, the complainant list should be filed and the witnesses should be filed.

The case file be put up on 27-4-2023 for appearance.”

**9.** In such circumstances referred to above, the appellants preferred an application under Section 482 CrPC in the High Court, praying for quashing of the summoning order dated 28-2-2023 passed by the Additional Chief Judicial Magistrate, Khurja, Bulandshahar.

**10.** The High Court rejected the application filed by the appellants herein, observing as under : (*Delhi Race Club case*<sup>1</sup>, SCC OnLine All paras 15-19)

“15. On the basis of averments made in the complaint, it is a case of the complainant who was regularly supplying Oats, used for horse. In the year 1995, the complainant was asked to raise invoice in favour of the “Association”. The complainant agreed and continued to raise invoice in favour of the “Association”. After 2017, an amount of Rs 9,11,454 became due upon the applicants. He contacted Delhi Race Club (1940) Ltd. and he was directed to contact the “Association”. The applicant Delhi Race Club (1940) Ltd. and “Association” are not separate legal entity. The applicants and the “Association” were in collusion and committed fraud with complainant. The goods supplied by complainant were received but its payment was not made.

16. Admittedly, no civil proceedings are pending for the amount in question between the parties. It is not the case of the applicants that transaction was a commercial transaction whereas the case of opposite party No. 2 is for the supply made by him. He is bound to raise his payment on the direction of the Delhi Race Club (1940) Ltd. He raised invoices in favour of the “Association” from 1995. There is no change in the manner of raising invoices by the complainant.

Delhi Race Club (1940) Ltd. continued to make payment up to the year 2017. The complainant was not being paid Rs 9,11,454 by the applicants who instead transferred their responsibility to the "Association".

17. Suffice to mention here that the copy of the invoices are brought on record through counter affidavit by the complainant and the same is not controverted by the applicants. Prima facie, it reflects that the invoices were raised by complainant in accordance with the advice received by him and he continued to receive payment on the basis of such invoices and when the payment of Rs 9,11,454 was not paid to the complainant he contacted Delhi Race Club (1940) Ltd. which averted him to the "Association". It appears that Delhi Race Club (1940) Ltd. and the "Association" are not separate entity.

18. On the face of record, it appears that originally complainant was supplying oats to the 'Company'. In the year 1995, the complainant was directed to raise invoices in favour of the "Association". The Company continued to receive supply of Oats made by the complainant even after



Page: 702

1995, whereas invoices were raised in favour of the "Association". This direction of the company goes to show that there was some mala fide intention on the part of the Company. The complainant bona fide continued to make supply under the direction of the Company. The invoices were raised by the complainant in similar manner since 1995 to 2017 and thereafter. It appears that there was an oral direction to raise invoices in favour of "Association" made by the Company, which indicates mala fide of the Company.

19. After hearing the learned counsel for the parties and after perusing the impugned order, this Court is of the opinion that impugned order has been passed on the basis of facts and circumstances of the case after considering the evidence on record. There is no legal infirmity in the impugned orders, which may call for any interference by this Court in exercise of powers conferred under Section 482 CrPC."

11. Thus, according to the High Court, the intention on the part of the company was prima facie mala fide and the payment of Rs 9,11,434 could be said to be intentionally withheld.

**Scope of inquiry under Section 202 CrPC**

12. It is by now well-settled that at the stage of issuing process it is

not the duty of the court to find out as to whether the accused will be ultimately convicted or acquitted. The object of consideration of the merits of the case at this stage could only be to determine whether there are sufficient grounds for proceeding further or not. Mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation.

**13.** If, however, a bare perusal of a complaint or the evidence led in support of it shows essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, then of course, the complaint is liable to be dismissed at that stage only.

**14.** What the Magistrate has to determine at the stage of issue of process is not the correctness or the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a prima facie case on the assumption that what is stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true. [See : *D.N. Bhattacharjee v. State of W.B.*<sup>2</sup>]

**15.** Further it is also well-settled that at the stage of issuing process a Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the

merits or demerits of the case nor can the High Court go into this matter in its inherent jurisdiction which is to be sparingly used. The scope of the inquiry under Section 202 CrPC is extremely limited — only to the ascertainment of the truth or falsehood of the allegations made in the complaint — (i) on the materials placed by the complainant before the Court, (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complainant without at all advertent to any defence that the accused may have.

**16.** In fact in proceedings under Section 202 CrPC, the accused has

got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not. It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The discretion given to the Magistrate on this behalf has to be judicially exercised by him. Once the Magistrate has exercised his discretion, it is not for the High Court or even the Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in the conviction of the accused.

**17.** These considerations are totally foreign to the scope and ambit of an inquiry under Section 202 CrPC which culminates into an order under Section 204. [See : *Nagawwa v. Veeranna Shivalingappa Konjalgi*<sup>3</sup>.] It is no doubt true that in this very decision this Court has enumerated certain illustrations as to when the order of the Magistrate issuing process against the accused can be quashed or set aside. These illustrations are as under : (*Nagawwa case*<sup>3</sup>, SCC p. 741, para 5)

"5. ... (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and



(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally

competent authority and the like.”

**18.** Each penal section of the Penal Code or of the other laws can be subjected to an analysis by posing and answering the following questions:

I. What is the overt act stipulated in the section, which overt act has resulted in an injury?

II. What is the state of mind stipulated in respect of the accused and which state of mind must precede or accompany the act of the accused?

### **Analysis**

**19.** Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order<sup>1</sup>.

**20.** The case at hand is one of an unpaid seller. It is the case of the complainant that he used to regularly supply consignments of grains and oats meant for horses at the Delhi Race Club. The complainant used to raise invoices in favour of the Club and the Club used to pay the requisite amount. However, according to the complainant after 2017, the Club stopped making the payment. It is the case of the complainant that an amount of Rs 9,11,434 is due and payable by the appellants towards the supply of the consignment of oats.

**21.** The impugned order<sup>1</sup> passed by the High Court is a fine specimen of total non-application of mind. Although the complaint was filed for the offence punishable under Sections 406, 420 and 120-B, respectively, of IPC yet the Additional Chief Judicial Magistrate thought fit to take cognizance and issue process only for the offence of criminal breach of trust as defined under Section 405 IPC and made punishable under Section 406 IPC.

**22.** We are of the view that even if the entire case of the complainant is accepted as true no offence worth the name is disclosed.

**23.** This Court has time and again reminded that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put

questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise



Page: 705

and then examine if any offence is prima facie committed by all or any of the accused. [See : *Pepsi Foods Ltd. v. Special Judicial Magistrate*<sup>4</sup>.]

**24.** Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of Appellants 2 and 3, respectively, herein who are none other than office-bearers of Appellant 1 Company. When Appellant 1 is the Company and it is alleged that the company has committed the offence then there is no question of attributing vicarious liability to the office-bearers of the Company so far as the offence of cheating or criminal breach of trust is concerned. The office-bearers could be arrayed as accused only if direct allegations are levelled against them. In other words, the complainant has to demonstrate that he has been cheated on account of criminal breach of trust or cheating or deception practised by the office-bearers.

**25.** The Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that Appellants 2 and 3 herein were personally liable for any offence. Appellant 1 is a body corporate. Vicarious liability of the office-bearers would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

**26.** In *Legal Remembrancer v. Abani Kumar Banerji*<sup>5</sup>, a Division Bench of the Calcutta High Court speaking through K.C. Das Gupta, J. (as he then was) held that a Magistrate is not bound to take cognizance of an offence merely because a complaint is filed before him. He is required to carefully apply his mind to the contents of the complaint before taking cognizance of any offence alleged therein. The relevant observations read as under : (SCC OnLine Cal)

"... As I read Section 190 of the Code of Criminal Procedure and the subsequent sections, it seems to me to be clear that a Magistrate is not bound to take cognizance of an offence, merely because a petition of complaint is filed before him. Mr Mukherji's argument is

that a Magistrate cannot possibly take any action with regard to a petition of complaint, without applying his mind to it, and taking cognizance of the offence mentioned in the complaint necessarily takes place, when the Magistrate's mind is applied to the petition. Consequently Mr Mukherji argues, whenever a Magistrate takes the action, say, of issuing search warrant or asking the police to enquire and to investigate, he has taken cognizance of the case. In my judgment, this is putting a wrong connotation on the words "taking cognizance". What is "taking cognizance" has not been defined in the Code of Criminal Procedure, and I have no desire now to attempt to define it. *It seems to me clear, however, that before it can*



Page: 706

*be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) of the Code of Criminal Procedure, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter —proceeding under Section 200, and thereafter sending it for enquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind e.g. ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence. My conclusion, therefore, is that the learned Magistrate is wrong in thinking that the Chief Presidency Magistrate was bound to take cognizance of the case as soon as the petition of complaint was filed."*

(emphasis supplied)

**27.** The aforesaid observation of the Calcutta High Court was referred to and relied upon with approval by this Court in its decision in *R.R. Chari v. State of U.P.*<sup>6</sup>

**28.** In *Tilak Nagar Industries Ltd. v. State of A.P.*<sup>7</sup>, this Court held that the power under Section 156(3) CrPC can be exercised by a Magistrate even before he takes cognizance provided the complaint discloses the commission of cognizable offences and if the complaint does not disclose commission of cognizable offences, such an order of the Magistrate directing investigation is liable to be quashed. The relevant observations read as under : (SCC p. 574, paras 11-12)

"11. After considering the rival submissions, we are of the view that the contentions of Mr Luthra are correct in view of Section 155

(2) of the Code as explained in *Bhajan Lal*<sup>8</sup>. We are of the opinion that the statutory safeguard which is given under Section 155(2) of the Code must be strictly followed, since they are conceived in public interest and as a guarantee against frivolous and vexatious investigation.

12. The order of the Magistrate dated 21-6-2010 does not disclose that he has taken cognizance. However, power under Section 156(3) can be exercised by the Magistrate even before he takes cognizance provided the complaint discloses the commission of cognizable offence. Since in the instant case the complaint does not do so, the order of the Magistrate stated above cannot be sustained in law and is accordingly quashed."

29. The aforesaid decision was in context with the power of the Magistrate to order police investigation under Section 156(3) CrPC. What is sought to be conveyed in the said decision is that when the Magistrate orders police investigation under Section 156(3) CrPC he does not take cognizance upon the complaint. It is only upon receipt of the police report that the Magistrate may



take cognizance. If at the stage of pre-cognizance, the Magistrate is expected to be careful or to put it in other words, the Magistrate is obliged to look into the complaint threadbare so as to reach to a prima facie conclusion whether the offence is disclosed or not, then he is expected to be more careful when he is actually taking cognizance upon a private complaint and ordering issue of process.

30. The aforesaid aspect could be said to have been completely lost sight of by the High Court, while rejecting the application filed by the appellant herein under Section 482 CrPC, seeking quashing of the summoning order.

31. In *Mehmood Ul Rehman v. Khazir Mohammad Tunda*<sup>9</sup>, this Court held thus : (SCC p. 430, para 22)

"22. ... *The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. ... In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the*

*allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction. ... To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."*

(emphasis supplied)

**32.** The principle of law discernible from the aforesaid decision is that issuance of summons is a serious matter and, therefore, should not be done mechanically and it should be done only upon satisfaction on the ground for proceeding further in the matter against a person concerned based on the materials collected during the inquiry.

**33.** In the aforesaid circumstances, the next question to be considered is whether a summons issued by a Magistrate can be interfered with in exercise of the power under Section 482 CrPC. In the decisions in *Bhushan Kumar v. State (NCT of Delhi)*<sup>10</sup> and *Pepsi Foods*<sup>4</sup>, this Court held that a petition filed under Section 482 CrPC, for quashing an order summoning the accused is maintainable. There cannot be any doubt that once it is held that sine qua non for exercise of the power to issue summons is the subjective satisfaction "on the ground for proceeding further" while exercising the power to consider



the legality of a summons issued by a Magistrate, certainly it is the duty of the Court to look into the question as to whether the learned Magistrate had applied his mind to form an opinion as to the existence of sufficient ground for proceeding further and in that regard to issue summons to face the trial for the offence concerned. In this context, we think it appropriate to state that one should understand that "taking cognizance", empowered under Section 190 CrPC, and "issuing process", empowered under Section 204 CrPC, are different and distinct. [See the decision in *Sunil Bharti Mittal v. CBI*<sup>11</sup>].

**34.** In *Sunil Bharti Mittal*<sup>11</sup>, this Court interpreted the expression "sufficient grounds for proceeding" and held that there should be sufficiency of materials against the accused concerned before proceeding under Section 204 CrPC. It was held thus : (SCC pp. 644-

45, para 53)

*"53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."*


(emphasis supplied)

***Difference between criminal breach of trust and cheating***

**35.** This Court in its decision in *S.W. Palanitkar v. State of Bihar*<sup>12</sup> expounded the difference in the ingredients required for constituting of an offence of criminal breach of trust (Section 406 IPC) vis-à-vis the offence of cheating (Section 420). The relevant observations read as under : (SCC p. 246, paras 9-10)

"9. The ingredients in order to constitute a criminal breach of trust are : (i) entrusting a person with property or with any dominion over property; (ii) that person entrusted : (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are : (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in

 Page: 709

cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

**36.** What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420

IPC) have specific ingredients:

***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 (see : *S.W. Palanitkar*<sup>12</sup>).

***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;

(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 (see : *Harmanpreet Singh Ahluwalia v. State of Punjab*<sup>13</sup>).

**37.** Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

**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 405 IPC, 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.



**39.** Every act of breach of trust may not result in a penal offence of

criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in *Hari Prasad Chamaria v. Bishun Kumar Surekha*<sup>14</sup> as under : (SCC p. 824, para 4)

“4. We have heard Mr Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 of the Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 of the Penal Code, 1860. There is nothing in the complaint to show that the respondent had dishonest or fraudulent intention at the time the appellant parted with Rs 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating.”

**40.** To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

**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

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committed. Therefore, it is this intention, which is the gist of the offence.



Page: 711

**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.

**44.** At the most, the Court of the Additional Chief Judicial Magistrate could have issued process for the offence punishable under Section 420 IPC i.e. cheating but in any circumstances no case of criminal breach of trust is made out. The reason being that indisputably there is no entrustment of any property in the case at hand. It is not even the case of the complainant that any property was lawfully entrusted to the appellants and that the same has been dishonestly misappropriated. The case of the complainant is plain and simple. He says that the price of the goods sold by him has not been paid. Once there is a sale, Section 406 IPC goes out of picture. According to the complainant, the invoices raised by him were not cleared. No case worth the name of cheating is also made out.

**45.** Even if the Magistrate would have issued process for the offence punishable under Section 420 IPC i.e. cheating, the same would have been liable to be quashed and set aside, as none of the ingredients to constitute the offence of cheating are disclosed from the materials on record.

**46.** It has been held in *State of Gujarat v. Jaswantlal Nathal*<sup>15</sup> : (SCC OnLine SC para 8)

“8. The term “entrusted” found in Section 405 IPC governs not only the words “with the property” immediately following it but also the words “or with any dominion over the property” occurring thereafter—see *Velji Raghavji Patel v. State of Maharashtra*<sup>16</sup>. Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust — see *Jaswantra*



Page: 712

*Manilal Akhaney v. State of Bombay*<sup>17</sup>. The expression “entrustment” carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an “entrustment”.”

**47.** Similarly, in *CBI v. Duncans Agro Industries Ltd.*<sup>18</sup> this Court held that the expression “entrusted with property” used in Section 405 IPC connotes that the property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or that the beneficial interest in or ownership thereof must be in the other person and the offender must hold such property in trust for such other person or for his benefit. The relevant observations read as under : (SCC pp. 607-608, para 27)

“27. In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective parties as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. *In our view, the expression “entrusted with property” or “with any dominion over property” has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression “entrusted” appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the*

*ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression "trust" in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee."*

(emphasis supplied)



Page: 713

**48.** The aforesaid exposition of law makes it clear that there should be some entrustment of property to the accused wherein the ownership is not transferred to the accused. In case of sale of movable property, although the payment may be deferred yet the property in the goods passes on delivery as per Sections 20 and 24, respectively, of the Sale of Goods Act, 1930.

**"20. Specific goods in a deliverable state.**—Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of the price or the time of delivery of goods, or both, is postponed.

\* \* \*

**24. Goods sent on approval or "on sale or return".**— When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer—

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods on the

expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.”

**49.** 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. [See : *Lalit Chaturvedi v. State of U.P.*<sup>19</sup> and *Mideast Integrated Steels Ltd. v. State of Jharkhand*<sup>20</sup>.]

**50.** The case at hand falls in Category 1 as laid in *Nagawwa*<sup>3</sup> referred to in para 17 of this judgment.

**51.** If it is the case of the complainant that a particular amount is due and payable to him then he should have filed a civil suit for recovery of the amount against the appellants herein. But he could not have gone to the Court of the Additional Chief Judicial Magistrate by filing a complaint of cheating and criminal breach of trust. It appears that till this date, the complainant has not filed any civil suit for recovery of the amount which according to him is due and payable to him by the appellants. He seems to have prima facie lost the period of limitation for filing such a civil suit.

**52.** In such circumstances referred to above, the continuation of the criminal proceeding would be nothing but abuse of the process of law.



### ***Final conclusion***

**53.** 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 British India after Independence. IPC came into force in the sub-continent during the British rule in 1862. 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 1-7-2024. 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.

**54.** 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 an FIR, this responsibility is of the police — to thoroughly ascertain whether the allegations levelled by the informant indeed fall 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.

**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 vis-à-vis 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 IPC (now BNS, 2023) are not twins that they cannot survive without each other.

**56.** In view of the aforesaid, the appeal succeeds and is hereby allowed.

**57.** The impugned order<sup>1</sup> passed by the High Court is set aside so also the order passed by the Additional Chief Judicial Magistrate, Khurja, Bulandshahar taking cognizance upon the complaint.

**58.** Pending applications, if any, shall stand disposed of.

**59.** We direct the Registry to send one copy each of this judgment to the Principal Secretary, Ministry of Law and Justice, Union of India and also to the Principal Secretary, Home Department, Union of India.

— — —

<sup>†</sup> Arising from the impugned Final Judgment and Order in *Delhi Race Club (1940) Ltd. v. State of U.P.*, 2024 SCC OnLine All 4393 (Allahabad High Court, Application under S. 482 No. 15453 of 2023, dt. 3-4-2024) **[Reversed]**

<sup>1</sup> *Delhi Race Club (1940) Ltd. v. State of U.P.*, 2024 SCC OnLine All 4393

<sup>2</sup> *D.N. Bhattacharjee v. State of W.B.*, (1972) 3 SCC 414 : 1972 SCC (Cri) 564

<sup>3</sup> *Nagawwa v. Veeranna Shivalingappa Konjalgi*, (1976) 3 SCC 736 : 1976 SCC (Cri) 507

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- <sup>4</sup> *Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400
- <sup>5</sup> *Legal Remembrancer v. Abani Kumar Banerji*, 1950 SCC OnLine Cal 49 : AIR 1950 Cal 437
- <sup>6</sup> *R.R. Chari v. State of U.P.*, 1951 SCC 250 : AIR 1951 SC 207
- <sup>7</sup> *Tilak Nagar Industries Ltd. v. State of A.P.*, (2011) 15 SCC 571 : (2012) 4 SCC (Cri) 645
- <sup>8</sup> *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426
- <sup>9</sup> *Mehmood Ul Rehman v. Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124
- <sup>10</sup> *Bhushan Kumar v. State (NCT of Delhi)*, (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872
- <sup>11</sup> *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687
- <sup>12</sup> *S.W. Palanitkar v. State of Bihar*, (2002) 1 SCC 241 : 2002 SCC (Cri) 129
- <sup>13</sup> *Harmanpreet Singh Ahluwalia v. State of Punjab*, (2009) 7 SCC 712 : (2009) 3 SCC (Cri) 620
- <sup>14</sup> *Hari Prasad Chamaria v. Bishun Kumar Surekha*, (1973) 2 SCC 823 : 1973 SCC (Cri) 1082
- <sup>15</sup> *State of Gujarat v. Jaswantlal Nathalal*, 1967 SCC OnLine SC 58 : AIR 1968 SC 700 : (1968) 2 SCR 408
- <sup>16</sup> *Velji Raghavji Patel v. State of Maharashtra*, 1964 SCC OnLine SC 185 : AIR 1965 SC 1433 : (1965) 2 SCR 429
- <sup>17</sup> *Jaswantrai Manilal Akhanev v. State of Bombay*, 1956 SCC OnLine SC 46 : AIR 1956 SC 575 : 1956 SCR 483
- <sup>18</sup> *CBI v. Duncans Agro Industries Ltd.*, (1996) 5 SCC 591 : 1996 SCC (Cri) 1045
- <sup>19</sup> *Lalit Chaturvedi v. State of U.P.*, (2024) 12 SCC 483 : 2024 SCC OnLine SC 171
- <sup>20</sup> *Mideast Integrated Steels Ltd. v. State of Jharkhand*, 2023 SCC OnLine Jhar 301

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ITEM NO.29

COURT NO.6

SECTION II-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal(Crl.)No(s).10625-10626/2024

[Arising out of impugned final judgment and order dated 19-03-2024 in CRLWP No. 466/2015 19-03-2024 in CRLA No. 2224/2015 passed by the High Court of Judicature at Bombay at Aurangabad]

THE OSMANABAD DISTRICT CENTRAL CO-OPERATIVE BANK LTD. Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Respondent(s)

WITH

SLP(Crl) No. 4753-4754/2024 (II-A)

T.P.(Crl.) Nos. 367/2024

T.P.(Crl.) Nos. 368/2024

IA No. 113645/2024 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 81426/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 85031/2024 - EXEMPTION FROM FILING O.T.

IA No. 113649/2024 - EXEMPTION FROM FILING O.T.

IA No. 85030/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 90066/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 17-07-2025 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.M. SUNDRESH

HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Petitioner(s) :

Ms. Meenakshi Arora, Sr. Adv.  
Ms. Priyanka Deshpande, Adv.  
Dr. R. R. Deshpande, AOR  
Mr. Bhagwant Deshpande, Adv.

Mr. Shyam Divan, Sr. Adv.  
Mr. Satyajit A Desai, Adv.  
Mr. Sachin Singh, Adv.  
Mr. Siddharth Gautam, Adv.  
Mr. Abhinav K. Mutyalwar, Adv.  
Mr. Ananya Thapliyal, Adv.  
Ms. Anagha S. Desai, AOR  
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For Respondent(s) :

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Mr. Abhinav K. Mutyalwar, Adv.  
Mr. Ananya Thapliyal, Adv.  
Ms. Anagha S. Desai, AOR

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Mr. Siddharth Dharmadhikari, Adv.  
Mr. Shrirang B. Varma, Adv.  
Ms. Aagam Kaur, Adv.  
Mr. Kartikey, Adv.  
Ms. Gayatri Agarwal, Adv.  
Ms. Shubhangi Agarwal, Adv.  
Mr. Utkarsh Kumar, Adv.

Ms. Surabhi Guleria, AOR  
Mr. Shrivallabh Panchpore, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

1. List the Special Leave Petition(s) in the second week of December, 2025.
2. In the meanwhile, the Trial Court shall expedite the trial and make an endeavour to complete the trial in or before the month of November, 2025.
3. Registry is directed to communicate this Order to the concerned Court.
4. Detag T.P.(Crl.) No. 367/ 2024 and T.P.(Crl.) No. 368/2024 from the batch of matters.

(NISHA KHULBEY)  
SENIOR PERSONAL ASSISTANT

(POONAM VAID)  
ASSISTANT REGISTRAR

True Copy

2025 SCC OnLine SC 1643

In the Supreme Court of India  
(BEFORE J.B. PARDIWALA AND R. MAHADEVAN, JJ.)

Shikhar Chemicals ... Petitioner(s);

*Versus*

State of Uttar Pradesh and Another ... Respondent  
(s).

Petition for Special Leave to Appeal (Crl.) No. 11445 of 2025

Decided on August 4, 2025

Advocates who appeared in this case:

Mr. Surjadipta Seth, Adv., Mr. Arindam Ghosh, AOR, For Petitioner(s)

ORDER

1. This petition arises from the order passed by the High Court of Judicature at Allahabad (Coram of Prashant Kumar, J.) in Criminal Miscellaneous Application No. 2507/2024 dated 05.05.2025 by which the application filed by the petitioner herein seeking quashing of the proceedings of Complaint Case no. 113283 of 2023 pending in the Court of Additional Chief Judicial Magistrate-I, Kanpur Nagar came to be rejected.

2. With all due deference and humility at our command, we are constrained to observe that the impugned order is one of the worst and most erroneous orders that we have come across in our respective tenures as judges of this Court.

3. The judge concerned has not only cut a sorry figure for himself but has made a mockery of justice. We are at our wits' end" to understand what is wrong with the Indian Judiciary at the level of High Court. At times we are left wondering whether such orders are passed on some extraneous considerations or it is sheer ignorance of law. Whatever it be, passing of such absurd and erroneous orders is something unpardonable.

4. It all started with a private complaint lodged by the respondent no. 2 herein in the Court of Additional Chief Judicial Magistrate-I, Kanpur Nagar, which came to be registered as Complaint Case No. 113283 of 2023. The complaint reads thus:

*"1. That the complainant is engaged in the wholesale and retail business of yarn (thread) used in fabric manufacturing, through his firm M/s Lalita Textile Concern. The respondent, through her firm M/s Shikhar Chemicals, is involved in the business of manufacturing and selling cloth made from yarn supplied by the*

*complainant.*

2. *That since both parties are in the same trade, they have had business relations for the past 4-5 years. In this regard, the complainant, through his firm, supplied goods (yarn) to the respondent's firm worth a total of Rs. 52,34,385/- (Fifty-two lakhs thirty-four thousand three hundred eighty-five only) between April 2019 and July 2019, against various attached tax invoices. Out of this, the respondent paid Rs. 47,75,000/- (Forty-seven lakhs seventy-five thousand only) through RTGS transfers. (Statement of account showing received and outstanding amounts is attached.) A balance of Rs. 4,59,385/- (Four lakhs fifty-nine thousand three hundred eighty-five only) has remained unpaid since August 2019. As per Yarn Committee and market regulations, interest at the rate of 8% is payable on the outstanding amount if not cleared within 15 days. Till the date of filing this application, an additional amount of Rs. 7,23,711/- has become due as interest, which is also recoverable from the respondent.*
3. *That the complainant attempted to contact the respondent several times via phone for the outstanding payment, but the respondent failed to make any payment. The complainant submitted a complaint to the concerned Deputy Commissioner of the GST Zone/Range/Sector. The GST department issued notices seeking explanation from the respondent, but she failed to respond or provide any clarification. Subsequently, another legal notice was issued under Section DRC-501A of GST Act, but the respondent again did not respond. The department, through proper legal process, imposed a penalty on the respondent for fraudulently availing tax benefits. The action was taken under Section 73(9) of the Act on 19/04/2023, as per information received by the complainant under RTI (copy enclosed).*
4. *That the complainant, through his advocate, sent a legal notice to the respondent, which was returned undelivered from all addresses (Factory/Home/Office) with the remark that the premises were locked. All notices were sent to addresses registered with the GST department. These events made the complainant reasonably believe that the respondent has absconded after fraudulently obtaining goods and financial benefits. (Returned notices with postal documents are enclosed.)*
5. *That the complainant again sent a legal notice through his advocate to all GST-registered addresses of the respondent (Factory/Home/Office) for recovery of dues and to initiate criminal proceedings for the fraud. The notice sent to 127/536 W-2, Damodar Nagar was returned with the remark "no one found," and*

*the notice sent to E-52, Site No. 1, Industrial Area, Dahi Chowki, Unnao was returned with the remark "refused to accept." (Copy of postal refusal is enclosed.)*

6. *That the complainant submitted written complaints to the Station Officer, P.S. Badshahi Naka, and the Police Commissioner, requesting registration of FIR against the respondent under applicable sections for fraud, cheating, and criminal conspiracy. However, no FIR was registered. (Copies of the complaint applications are enclosed.)*
7. *That the GST department has already found the respondent guilty under Section 73(9) of the GST Act and penalized her accordingly. Hence, there is no further doubt about the criminal conduct of the respondent, as established by facts and evidence mentioned herein. Therefore, it is just and proper that this Hon'ble Court may take cognizance of the matter, summon the accused, and punish her as per law."*

(Emphasis supplied)

5. The statement of the complainant recorded by the Magistrate upon verification reads thus:

1. *That I am the proprietor and authorized signatory of the complainant firm mentioned in the complaint and have full knowledge of the facts stated in this affidavit.*
2. *That I, through my firm M/s Lalita Textile Concern, am engaged in the wholesale and retail trade of yarn (used in the textile industry). The opposite party, through their firm M/s Shikhar Chemicals, carries on the business of manufacturing and selling fabric using the yarn supplied by my firm.*
3. *That since both our businesses are interrelated, I have been engaged in business transactions with the opposite party for the past 4-5 years. Between April 2019 and July 2019, yarn worth Rs. 52,34,385/- (Rupees Fifty-Two Lakhs Thirty-Four Thousand Three Hundred Eighty-Five only) was supplied to the opposite party on order, through multiple Tax Invoices. Against this supply, the opposite party made a total payment of Rs. 47,75,000/- (Rupees Forty-Seven Lakhs Seventy-Five Thousand only) via RTGS. A balance of Rs. 4,59,385/- (Rupees Four Lakhs Fifty-Nine Thousand Three Hundred Eighty-Five only) has remained unpaid since August 2019. As per the Yarn Committee and market regulations, if payment is not made within 15 days, 8% interest becomes applicable on the outstanding amount. Accordingly, as of the date of filing this complaint/petition, the total outstanding amount including interest stands at Rs. 7,23,711/-, which is yet to be received by me from the opposite party.*

4. *That I made several attempts to contact the opposite party telephonically for payment, but no amount was paid. A formal complaint was made to the Deputy Commissioner of the concerned GST Zone/Range/Sector. The GST department issued notices to the opposite party seeking clarification. However, no response or clarification was provided by them. The department again issued a notice under GST Section 501A for legal action, which was also ignored. Subsequently, the department penalized the opposite party for dishonestly and fraudulently availing tax benefits from my business. Based on my RTI application, the GST Department, in its reply dated 12.06.2023, confirmed that action was taken against the opposite party under Section 73(9) of the GST Act on 19.04.2023. (Copy enclosed).*
5. *That I also served a legal notice to the opposite party through my advocate, but all notices sent to the factory/home/office addresses were returned with remarks such as "Premises Locked." These notices were sent to addresses registered with the GST Department. After this entire process, I firmly believe that the opposite party has intentionally defrauded me by dishonestly benefiting from the business and has now absconded. (All claim notices along with postal tracking documents are annexed.)*
6. *That again, through my advocate, I sent recovery notices and legal notices for initiating criminal action for fraud and cheating. These were sent to both GST- registered addresses of the opposite party (factory/home/office). The notice sent to home/office at 127/536 W-2 Damodar Nagar was returned with the remark "No one found," and the factory notice at E-52, Site No. 1, Industrial Area, Dahi Chowki, Unnao was returned with the remark "Refused to accept." (Returned envelopes with refusal remarks are enclosed.)*
7. *That I submitted written complaints to the SHO, Badshahi Naka Police Station, and the Commissioner of Police requesting registration of FIR under relevant sections for fraud, cheating, and criminal conspiracy against the opposite party, but no FIR was registered. (Copies of complaints enclosed.)*

(Emphasis supplied)

6. Thus, the Magistrate thought fit to take cognizance upon the complaint but at the same time postponed the issue of process, as he thought fit to initiate magisterial inquiry under Section 202 of the Criminal Procedure Code, 1973 (for short "the Cr. P.C."). At the end of the magisterial inquiry, the court concerned thought fit to issue process only for the offence punishable under Section 406 of the IPC i.e. criminal breach of trust.

7. We may reproduce some part of the order passed by the

Magistrate while issuing process: —

"Upon perusal of the file, it is evident that both the complainant and the accused are businesspersons. As per the complainant's statement, goods worth Rs. 52,34,385/- were supplied to the accused between April and July 2019, of which Rs. 47,75,000/- was paid, and Rs. 4,59,385/- remained unpaid since August 2019. According to market regulations of the Yarn Committee, if payment is not made within 15 days, 8% interest is applicable on the outstanding amount, which totals Rs. 7,23,711/-, and remains unpaid. The complainant, in his statement under Section 200 Cr. P.C., also stated that Rs. 7,23,711/- is still due from the accused. The witnesses under Section 202 Cr. P.C. corroborated the same. The complainant has submitted relevant invoices, bank statements, etc., in support. From the statements under Sections 200 and 202 Cr. P.C., a prima facie case under Section 406 IPC appears to be made out against Mrs. Kumkum Pandey, Proprietor of M/s Shikhar Chemicals. Hence, this case is fit for cognizance and summoning.

Order:

The accused, Mrs. Kumkum Pandey, Proprietor of M/s Shikhar Chemicals, is summoned for trial under Section 406 IPC. The complainant is directed to pursue the case within a week. Let the accused appear in court on 15.12.2023.

(Emphasis supplied)

8. The aforesaid Order passed by the Magistrate came to be challenged before the High Court under Section 482 of the Cr. P.C.

9. The High Court rejected the application.

10. In such circumstances, the petitioner is here before this Court with the present petition.

11. The case of the respondent no. 2 as a complainant, is plain and simple. He claims to be an unpaid seller. According to him, he delivered goods in the form of thread to the petitioner herein worth Rs. 52,34,385/- out of which an amount of Rs. 47,75,000/- came to be paid to the complainant by the petitioner herein, however, the balance amount has not been paid, till this date.

12. It is for the recovery of the balance amount that he thought fit to file a criminal complaint and institute criminal proceedings. It appears that the complainant in the first instance tried to lodge a FIR but the police declined to register the FIR saying that it was purely a civil dispute.

13. 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.

14. 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 v. Jaswantlal Nathal*", (1968) 2 SCR 408, wherein this Court stated that a mere transaction of sale cannot amount to an entrustment. We quote the relevant observations made by this Court as under:—

*"8. The term "entrusted" found in Section 405 IPC governs not only the words "with the property" immediately following it but also the words "or with any dominion over the property" occurring thereafter — see Velji Raghvaji Patel v. State of Maharashtra, [(1965) 2 SCR 429]. Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust — see Jaswantraji Manilal Akhaney v. State of Bombay, [1956 SCR 483, 498500]. The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an entrustment. It is true that the Government had sold the cement in question to BSS solely for the purpose of being used in connection with the construction work referred to earlier. But that circumstance does not make the transaction in question anything other than a sale. After delivery of the cement, the Government had neither any right nor dominion over it. If the purchaser or his representative had failed to comply with the requirements of any law relating to cement control, he should have been prosecuted for the same. But we are unable to hold that there was any breach of trust.*

*9. A case somewhat similar to the one before us came up for consideration before a Division Bench of the Calcutta High Court in Satyendra Nath Mukherji v. Emperor, [ILR (1947) 1 Cal 97]. These are the facts of that case. One Satya Sunder Mitra was a contractor. He was granted a permit by the Executive Engineer, A.R.P. (Shelters), construction division, to purchase seven tons of cement from Balmer Lawrie and Company. The permit was granted on the condition that the cement was to be used in the work connected with the construction of shelters, which work he had contracted to do for*

the Executive Engineer. The finding in the case was that with the help of an employee of Mitra and Chaudhuri who were banians of Balmer Lawrie and Company, six tons of cement were diverted and disposed of for another purpose. The trial court convicted Satya Sunder Mitra under Section 406 IPC and another for abetting the offence committed by Satya Sunder Mitra. The High Court allowed their appeal, holding that there was no entrustment of the cement in question within the meaning of the term as used in Section 405 of Penal Code, 1860. In the course of the judgment it was observed:

“The permit was granted in accordance with the system of control established under the Defence of India Rules, under which an order has been issued by the Government of India preventing selling agents such as Balmer Lawrie and Company from delivering any cement except under instructions from the Government or from the Cement Adviser. The transaction, so far as the contractor is concerned, was one of purchase and the property in the cement clearly passed to him. No doubt he could not have obtained the permit through the Executive Engineer if it had not been intended that the cement should be used for the purpose directed by the Engineer, but, in our opinion, in no sense can it be said that there was any entrustment either of the property or of any dominion over the property.”

We are of the opinion that the legal position is as explained in that decision.

10. The decision of the Kings Bench Division in King v. Grubb, [[1915] 2 K.B. 683] relied on by Mr. Dhebar learned counsel for the appellant does not bear on the question under consideration. Therein, the factum of entrustment was not in dispute. The only question of law that arose for decision in that case was whether when a property is entrusted to a company, and the person directing and controlling the company, by whose instructions the property had passed into the possession of the company, had converted the same fraudulently, that person can be said to have committed an offence under Section 1 of the Larceny Act, 1901. The court answered that question in the affirmative.

11. In view of our conclusion that the prosecution has failed to prove the entrustment pleaded, it is unnecessary to consider whether on the material on record it can be concluded that the respondent had misappropriated 40 bags of cement referred to earlier.”

(Emphasis supplied)

15. 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.

16. This very Bench in a very recent pronouncement in the case of "*Delhi Race Club (1940) Ltd. v. State of U.P.*", (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.

17. The most disturbing part of this matter is the manner in which the High Court dealt with the quashing application filed by the petitioner-herein and the observations made in para 12 of its impugned order.

18. We quote the paragraph 12 as under:—

"12. o.p. no. 2 appears to be a very small business firm and for him, the aforesaid amount along with interest is a huge amount. In case, subject to filing civil suit, O.P. no. 2 will not be in position to pursue the civil litigation. In case, O.P. no. 2 files a civil suit firstly, it will take years for it to see any ray of hope and secondly, he will have to put more money to pursue the litigation. To be more precise it would seem like good money chasing bad money. If this Court allows the matter to be referred to civil court on account of civil dispute between the parties, it would amount to travesty of justice and O.P. no. 2 would suffer irreparable loss and he might even not be in a position to emerge from the financial constraints to pursue the matter."

(Emphasis supplied)

19. The Judge has gone to the extent of saying that asking the complainant to pursue civil remedy for the purpose of recovery of the balance amount will be very unreasonable as civil suit may take a long time before it is decided and, therefore, the complainant should be permitted to institute criminal proceedings for the purpose of recovery of the balance amount.

20. Is it the understanding of the High Court that ultimately if the accused is convicted, the trial court would award him the balance amount? The observations recorded in para 12 are shocking. It is an extremely sad day for one and all to read the observations contained in para 12 of the impugned order. 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.

21. 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.

22. In the result, we partly allow this petition and set aside the impugned order passed by the High Court. We remand the matter to the High Court for fresh consideration of the Criminal Miscellaneous Application No. 2507 of 2024. The quashing petition shall be reheard on its own merits keeping in mind the dictum laid in the two decisions of this Court referred to above.

23. We request the Hon'ble the Chief Justice of the High Court of Allahabad to assign this matter to any other Judge of the High Court as he may deem fit.

24. The Chief Justice of High Court shall immediately withdraw the present criminal determination from the concerned Judge.

25. The Chief Justice shall make the concerned judge sit in a Division Bench with a seasoned senior judge of the High Court.

26. We further direct that the concerned judge shall not be assigned any criminal determination, till he demits office. If at all at some point of time, he is to be made to sit as a single judge, he shall not be assigned any criminal determination.

27. We have been constrained to issue directions as contained in Paras 22, 23, 24, 25 and 26 respectively, referred to above, keeping in mind that the impugned order is not the only erroneous order of the concerned Judge that we have looked into for the first time. Many such erroneous orders have been looked into by us over a period of time.

28. Registry to forward one copy of this order to Hon'ble the Chief Justice of Allahabad High Court at the earliest.

29. Pending application(s), if any, stands disposed of.

SUPREME COURT OF INDIA  
 RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Crl.) No. 11445/2025  
 [Arising out of impugned final judgment and order dated 05-05-2025  
 in A482 No. 2507/2024 passed by the High Court of Judicature at  
 Allahabad]

Shikhar Chemicals.....Petitioner(s)

*Versus*

State of Uttar Pradesh and Another.....Respondent

(s)

IA No. 183167/2025 - Exemption from Filing O.T.

ORDER

1. The Special Leave Petition is partly allowed in terms of the signed order.

2. The relevant part of the signed order is as under: —

*"...We request the Hon'ble the Chief Justice of the High Court of Allahabad to assign this matter to any other Judge of the High Court as he may deem fit.*

*24. The Chief Justice of High Court shall immediately withdraw the present criminal determination from the concerned Judge.*

*25. The Chief Justice shall make the concerned judge sit in a Division Bench with a seasoned senior judge of the High Court.*

*26. We further direct that the concerned judge shall not be assigned any criminal determination, till he demits office. If at all at some point of time, he is to be made to sit as a single judge, he shall not be assigned any criminal determination.*

*27. We have been constrained to issue directions as contained in Paras 22, 23, 24, 25 and 26 respectively, referred to above, keeping in mind that the impugned order is not the only erroneous order of the concerned Judge that we have looked into for the first time. Many such erroneous orders have been looked into by us over a period of time.*

*28. Registry to forward one copy of this order to Hon'ble the Chief Justice of Allahabad High Court at the earliest."*

3. Pending application(s), if any, stands disposed of.

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

**CRIMINAL APPLN. NO. Nil OF 2025**

**In Reg. Cr. Case. No. 398/ 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 Osmanabad  
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 and the very nature of the dispute is civil and not criminal, and the accused could not properly point out these defects before the charges were framed.
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 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 Osmanabad District Central Co-operative Bank Ltd. (hereinafter “Osmanabad Bank”), Nagpur District Central Co-operative Bank (hereinafter “Nagpur Bank”) and M/s Home Trade Ltd. (hereinafter “HTL”), pertaining to purchase and sale of Government Securities during the year 2001–2002.
4. That the prosecution case, in brief sans of necessary details, is that the Osmanabad Bank paid money to purchase Government securities worth rupees 30 crores from HTL. That a contract note was issued on 01.02.2002. It is alleged that as HTL failed to honour the transaction, although the time for providing Government securities was still available, HTL was made to issue a cheque to the Osmanabad Bank for returning the money it received, but these cheques got dishonoured. This led to the lodging of FIR on 05.05.2002 and the charges have been framed against the applicant under Sections 406, 420, 468, 471 read with Section 120B and Section 34 of the Indian Penal Code, 1860 through an order dated 08.05.2014 [**Annexure-B**].
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 which are commercial in nature and do not prima facie attract any criminal charges.
6. **That the charges framed on 08.05.2014 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.**
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 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.

8. 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.”*

9. In the said **Delhi Race Club Ltd. v. State of U.P. [(2024) 10 SCC 690]** [Annexure-C], 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.”*

10. Despite this well-settled legal position existing even before the Delhi Race Club judgment and more emphatically laid down with utmost clarity now, the court framed charges under both Section 406 and 420 IPC and other sections as co-existing. 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, constitutes a cumulative miscarriage and failure of justice, warranting the present application.
11. Even otherwise, the present dispute is civil in nature and has been given a criminal colour, amounting to an abuse of process of law. It is a matter of record that cheque bouncing cases filed against HTL and accused were also dismissed.
12. 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 and issuance of cheques for amounts allegedly due.

13. 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.
14. 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.”***

15. 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.
16. That this case is the very kind that the Hon'ble Supreme Court has repeatedly warned against, the casual framing of mutually exclusive charges, and the criminalization of purely civil disputes. Each of these infirmities, individually grave, have compounded towards serious and irreparable prejudice to the Applicant and has led to failure of justice.
17. 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.
18. 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, 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 14th day of August, 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 **14<sup>th</sup> Day of AUGUST, 2025** at Delhi.

DEPONENT

I know and identify the deponent

True Copy

(ADVOCATE)

**R.C.C. No. 398/2002**  
**CNRNO.MHOS030003962002**

**ORDER BELOW EXH. 953**

1. Accused No.7 Sanjay Hariram Agarwal has filed present application under Sec. 216 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.) / under Sec. 239 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short BNSS) for alteration of charges.

2. It is contended that the present criminal proceeding arises out of set of commercial transactions between Osmanabad District Central Co-Operative Bank Ltd. (for short ODCC Bank), Nagpur District Central Co-Operative bank Ltd. (for short NDCC Bank) and Ms. Home Trade Ltd., (for short HTL) pertaining to purchase and sale of Government Securities during the year 2001-2002. As per the prosecution case the ODCC Bank paid money to purchase Government securities worth Rs. 30 crore from HTL. A contract note was issued on 01.02.2002. It is alleged that the HTL failed to honour the transaction, although the time for providing Government securities was still available. HTL was made to issue a cheque to the ODCC Bank for returning the money it received but these cheques got dishonored. This led to the lodging of FIR on 05.05.2002 and thereafter the charges have been framed against the accused under Secs. 406,420,468,471 r/w Sec. 120B and under Sec. 34 of the Indian Penal Code, 1860 (for short IPC) through an order dt. 08.05.2014. It is further contended that at the relevant time, accused was one of the directors of HTL. The gravamen of the

allegations is limited to the above said transactions which are commercial in nature and do not prima facie attract any criminal charges.

3. It is further contended that the charges framed on 08.05.2014 under Sections 406 and 420 of IPC are legally antithetical and cannot co-exist, thereby violating the most basic principles of criminal jurisprudence and causing irreparable prejudice to the accused from the very inception of the trial and has led to complete failure of justice. It is further contended that Sec. 420 of IPC requires proof of dishonest intention at the inception of the transaction, i.e. when inducing the delivery of property through deceit. Conversely Sec. 406 of 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. It is further contended that despite well settled legal position, the court has framed charges under both the Sections 406 and 420 of IPC simultaneously and other sections as co-existing. 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, constitutes a cumulative miscarriage and failure of justice, warranting the present application.

4. It is further contended that the present dispute is civil in nature and has been given a criminal colour, amounting to an abuse of process of law. 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 and issuance of cheques for amounts allegedly due. Therefore the allegations, at the best make out a claim for recovery of money, which is enforceable through civil remedies and not through prosecution under the penal code. Therefore continuing the trial on the basis of allegations which arise for the commercial dispute amount to permitting the abuse of criminal process and causes irreparable prejudice to the accused. Hence the accused has filed present application thereby prayed to drop or alter the antithetical and unsustainable charges framed both under Sec. 406 and 420 of IPC. Accused is further seeking direction that the trial may recommence only after amending the charges. Hence the present application.

5. Prosecution has taken strong objection on this application by filing its say vide Exh. 962. It is contended that in the present matter offence is registered at Police Station, Dharashiv (City) bearing Cr. No 106/2002 on complaint given by Divisional Registrar co-op Societies, Latur for the offences punishable under Sec. 218, 406, 409, 420, 468, 471, 120B of IPC, on the basis of report of Special Auditor Class-1 (Bank), Latur. After completion of investigation, Investigating Officer submitted charge sheet against the 10 accused and thereafter charges have been framed by the

court against all the accused.

6. It is further contended that the present accused i.e. the accused No. 7 is head of the Home Traders at Washi, Mumbai which is not authorised Agency to take deposits and invest in shares. It is further contended that ODCC Bank received an amount of RS. 30 Crore from NDCC Bank on 31.01.2002 on its A/c No. 73/4701/01. Thereafter ODCC Bank transferred amount to account of Home Traders Washi Mumbai on its A/c No 3A/17031. It is further contended that present accused in collusion with accused No. 1 and 2 has deposited the amount in Home traders. Further there is sufficient documentary evidence against the present accused.

7. It is further contended that ODCC Bank has disobeyed legal formalities while investing share's with HTL. It is further contended that before 31.01.2002 there was no agreement or correspondence between HTL and ODCC Bank. The ODCC Bank had not taken precaution regarding RBI circular for investment of funds. All these facts have been mentioned in the charge sheet, in the report filed by the Special Auditor and are also deposed by the prosecution witnesses. Therefore the court has rightly framed the charge. It is further contended that there is sufficient oral and documentary evidence against the present accused, to prove his role in the offence that he has taken deposits in illegal manner to invest it in shares. The present accused in collusion with accused Nos 1 and 2 alongwith other accused has mis-appropriated huge amount

of Rs. 30 crore which is public money. Hence considering the above facts and circumstances the prosecution has prayed to reject the present application.

8. Heard both sides at length. On behalf of accused No. 7 learned Adv. Diyashri Kamanya has argued the matter through video conferencing. She has argued that in the present matter both the charges under Sec. 406 and 420 of the IPC have been framed against the accused simultaneously. However they are antithetical to each other. Further it is highly impracticable for the accused, the defend both the charges. She has further argued that the transaction in the present proceeding is commercial in nature which is given criminal color. Therefore continuing the trial on the basis of allegations which arises from commercial disputes, will cause irreparable prejudice to the accused. Hence she has argued to drop or alter in the antithetical charges under Sec. 406 and 420 of IPC and further to recommence the trial after amending the charges. In support of her contentions, she relied upon the following judgments of Hon'ble Supreme Court of India and Hon'ble Bombay High Court :

1. *Shikhar Chemicals Vs. State of Uttar Pradesh and another, reported in 2025 SCC OnLine (SC) 1643, Judgment dated 4<sup>th</sup> August, 2025 (Hon'ble Supreme Court of India)*
2. *Arshad Neyaz Khan Vs. State of Jharkhand and another, reported in 2025 SCC OnLine (SC) 2058, Judgment dated 24<sup>th</sup> September, 2025 (Hon'ble Supreme Court of India)*

3. *Delhi Race Club (1940) Ltd. And others, Vs. State of Uttar Pradesh and another, reported in 2024 SCC OnLine (SC) 2248, Judgment dated 23<sup>rd</sup> August, 2024 (Hon'ble Supreme Court of India)*

4. *Bharat Uttam Rajurkar and others Vs. State of Maharashtra, in Criminal Writ Petition No. 1232 of 2017 decided on 12<sup>th</sup> Jaunuary, 2018 (Hon'ble Bombay High Court, Bench at Nagpur).*

9. On the contrary learned APP Shri. Shevalkar for the State has argued in the line his say given to the present application.

10. Considering rival submissions of both sides and perusing entire available material on record it appears that accused No. 7 has filed present application for alteration of charges. There are two grounds taken for pressing the prayer for alteration of said charges. The first ground is that Prosecution's case demonstrates that the underlying transactions were commercial in nature involving purchase and sale of Government Securities and issuance of cheques for amounts allegedly due. Therefore the allegations, at the best make out a claim for recovery of money, which is enforceable through civil remedies and not through prosecution under the penal code. The second ground is that the charges framed under Sections 406 and 420 of IPC are antithetical and cannot co-exist, thereby violating the most basic principles of criminal jurisprudence and causing irreparable prejudice to the accused from the very inception of the trial and has led to complete failure of justice. To deal with both the above objections, it is necessary to look into the

prosecution story. The prosecution case, in short, is that all the ten accused have hatched the criminal conspiracy to cheat the ODCC Bank for Rs. 30 crore. At the relevant time deceased accused No. 1 was the Chairman of ODCC Bank while accused No. 10 was the Chairman of the NDCC Bank. There was a collusion between accused 1 and 10 to purchase Government securities to HTL, an unauthorized broker. Thereafter on 31.01.2002 the NDCC Bank got credited its 30 crore as a deposit in the account of ODCC Bank maintained with the Maharashtra State Co-Operative Bank Ltd., Mumbai. Then the ODCC Bank unauthorizedly credited the said amount of Rs. 30 crores in the account of HTL for purchasing Government Securities. Officer bearers of HTL then issued false contract notes of Government Securities worth Rs. 29,99,34,591/- to the officer of ODCC Bank and on the same day the HTL got credited an amount of Rs. 29,99,99,766.67 Ps. in the account of NDCC Bank with the Maharashtra State Co-Operative Bank Ltd., Mumbai. The HTL also issued false receipts of Rs. 29,99,34,591/- for the purchasing Government Securities and delivered it to the officer of ODCC Bank. On the same day i.e. on 01.02.2002 office bearer of HTL transferred Rs. 29,99,99,766.67 Ps in the account of NDCC Bank towards alleged sale proceeds of the Government Securities. It is further alleged that in the meeting held on 08.02.2002 of the Board of Directors of the ODCC Bank there was no discussion on the purchase of Government Securities from HTL and even then on the proceeding register wrong entry was made to the effect that there was resolution for purchasing Government

Securities and the Board of Directors have unanimously resolved to purchase Government Securities and that proceeding was signed by accused No. 1, 2 and 6. Thus it is the case of prosecution that deceased accused No. 1, Chairman of ODCC Bank and accused Nos. 2 to 6 being main office bearers of the said bank, without having prior permission from the Commissioner, Co-Operative Society, accepted deposit of Rs. 30 crore from NDCC Bank and in violation of RBI directions paid some of Rs. 29,99,34,591/- to HTL for Government Securities. Hence considering the prosecution case the Learned Predecessor of the Court has framed the charges against the accused vide Exh. 641.

11. Perusal of record further shows that the charges have been framed against the accused on 08.05.2014 vide Exh. 641. Perusal of record shows that the charge for the offence punishable under Sec. 120B of IPC has been framed all the accused, charges for the offences punishable under Sec. 409,468 and 471 r/w 34 of IPC have been framed against accused No. 3 to 5 , charges for the offences punishable under Sec. 406,468,471, r/w Sec. 34 of IPC have been framed against accused No. 7 to 9 and the charge for the offence punishable under Sec. 420 r/w 34 of IPC has been framed against accused No. 3 to 5 and 7 to 10. Hence it appears that accused No. 7 is charged with an offences punishable under Sec. 406,468,471,420 r/w Sec.34 of IPC and Sec. 120B IPC.

12. It is to be noted that before framing of charge, on 25.03.2008 the accused No. 7 i.e. present accused had filed an

application vide Exh. 407 for discharge under Sec. 239 of Cr.P.C. In the said application, alongwith other grounds, the accused had also taken ground that the transaction is purely civil in nature and not subject matter of Criminal Code. Further in view of order passed on the said application alongwith other two applications dt. 07.08.2017, the application for discharge came to be rejected. Hence from this it becomes clear that the application for discharge filed by accused No. 7 has been rejected by the court.

13. It is also important to mention here that before framing of charges the learned APP for State had filed draft of proposed charges vide Exh. 583 on 13.03.2014 and thereby prayed to frame the charges for the offences punishable under Sec. 120(b), 409,420,406,468 and 471 r/w Sec. 34 of IPC. Further it is to be noted that the accused No. 7 had filed written submissions at Exh. 606 on the said draft of proposed charges. Perusal of said written submission on the draft of proposed charges filed by accused No. 7 vide Exh. 606 shows that he had specifically mentioned therein that the provisions of Sec. 406 of IPC cannot invoke as the main ingredients required to attract the provisions of Sec. 405 and 406 of IPC are completely missing in the transaction under consideration. Further it was specifically mentioned in the said submissions that accused cannot be tried for the offences of cheating under Sec. 420 of IPC and Criminal Breach of Trust under Sec. 406 of IPC in the same trial. Sec. 406 and 420 of IPC cannot be applied simultaneously. Further there is no prima facie case against the accused under Sec. 406 r/w 34 and / or under Sec. 420 r/w 34 of

IPC. Perusal of record further shows that the learned predecessor of this court has passed detailed order below Exh. 1 on 06.05.2014. In the said order the court has considered all the written and oral submissions of the accused on the point of framing of charges. Further the contentions of the accused No. 7 that charges cannot be framed under Sec. 406 and 420 of IPC simultaneously, as well as the contention that the nature of transaction is civil which is given an criminal color, have been considered in detail by the court before framing of charges and only after considering all the objections taken by the present accused and other accused, the court, after passing detailed order in that regard below Exh. 1 on 06.05.2014, framed the charges against the accused below Exh. 641. Hence from the record it becomes clear that before framing of charge, all the accused were given an opportunity of hearing as required by Sec. 240 of Cr.P.C. and thereafter the charges have been framed against the accused.

14. Perusal of record further shows that charges have been framed against the accused on 08.05.2014. Thereafter prosecution has examined in all 22 witnesses till date. The matter is at its fag end. Further it is also important to mention here that as per the directions of Hon'ble Supreme Court of India this matter is required to be disposed of on or before 30<sup>th</sup> November, 2025. At this stage, the accused No. 7 has filed present application for alteration of charges. However as discussed hereinabove, both the objections of the accused have been thoroughly considered by the predecessor of this court before framing of charges itself and thereafter only

charges have been framed against the accused. Hence it appears that only to prolong the present matter, which is time bound by the Hon'ble Supreme Court of India, the accused has filed the present application.

15. Apart from this, if the application is considered on its own merits, then it appears that the accused has filed application for alteration of charges on two grounds as discussed hereinabove. As per the contention of the accused Prosecution's case demonstrates that the underlying transactions were commercial in nature involving purchase and sale of Government Securities and issuance of cheques for amounts allegedly due. The second ground is that charges framed under Sections 406 and 420 of IPC are antithetical and cannot co-exist. In support of his contentions, accused has relied upon various authorities of Hon'ble Apex Court and Hon'ble Bombay High Court. I have gone to the said authorities minutely and carefully. In view of ratio laid down by the Hon'ble Apex Court in the above said authorities relied upon by the accused, it becomes clear that there is distinction between the ingredients required to constitute both the offences i.e. offence of cheating and offence of criminal breach of trust. Both the offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. Further there is no doubt that the ratio laid down by the Hon'ble Apex and Hon'ble Bombay High Court is binding upon this court. However, with great respect, it is necessary to mention here that the facts of the above said authorities and the facts of the matter in hand are totally different. Hence the ratio laid down by

the Hon'ble Apex Court is not helpful to the accused in the present matter. In the present matter the prosecution case of scam of Rs. 30 crores by the Chairman and Bank Officers of the O.D.C.C. Bank and other accused, is based on peculiar facts and circumstances as stated hereinabove. On account of the nature of the acts or series of acts alleged against the accused, it is doubtful as to which of the several offences, the facts which may be proved will constitute and therefore in my opinion, by taking recourse of provision of Section 221 Cr.P.C., it was necessary to frame both the charges under Sec. 406 and 420 of IPC. Therefore said section is extracted as under :

***221. Where it is doubtful what offence has been committed. -***

*(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.*

*(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of subsection (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.*

*Illustrations*

*(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.*

*(b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be), though he was not charged with such offence.*

*(c) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.*

16. The above illustration (a) below S. 221 Cr.P.C./Sec. 244 of BNSS amply clarifies the position. Hence considering the peculiar facts and circumstances of the prosecution case the charges have been framed against the accused. It is also important to mention here that nothing has been brought on record by the accused No. 7 to show that due to the framing of both the charges under Sections 406 and 420 of IPC, actual prejudice has been caused to the accused in taking defence. On the contrary if eventually both the offences are made out of distinct and separate transactions, then prosecution will be prejudice if one of the charge is dropped. Hence in view of above discussion, I do not find it proper to drop or alter the charges and recommence the trial as prayed by the accused No. 7. There is no merit in the application for alteration of charge and therefore application is liable to be rejected. Accordingly I pass the following order.

**ORDER**

Application filed by accused No. 7 below Exh. 953 is rejected.

Date:- 13/10/2025

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

**CERTIFICATE**

**I affirm that, the contents of this P.D.F. file judgment / order are same word to word, as per the original Judgment.**

Name of stenographer	---	M.K.KULKARNI - GRADE-II
Court	---	Addl. Chief Judicial Magistrate, Osmanabad
Date of Dictation	---	13/10/2025
Typed on	---	14/10/2025
Order signed by the Presiding Officer on	---	15/10/2025
Order uploaded on	---	16/10/2025

True Copy

ITEM NO.41

COURT NO.17

SECTION II-D

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 16982/2025

[Arising out of impugned final judgment and order dated 27-08-2025 in CRMC No. 1186/2023 passed by the High Court of Delhi at New Delhi]

BHIM SAIN ARORA &amp; ORS.

Petitioner(s)

VERSUS

STATE OF (NCT OF DELHI)

Respondent(s)

IA No. 268358/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

Date : 10-11-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARAVIND KUMAR  
HON'BLE MR. JUSTICE N.V. ANJARIA

For Petitioner(s) :

Ms. Neha Kapoor, Adv.  
Mr. Kaushal Mehta, Adv.  
Ms. Shambhavi Jaishwal, Adv.  
Ms. Somya Chouhan, Adv.  
Mr. Sachin Choudhary, Adv.  
Mr. Gladson Salvador Rodrigues, Adv.  
Mr. Milind Kumar, AOR

For Respondent(s) :

UPON hearing the counsel the Court made the following  
O R D E R

1. Issue notice, returnable in four weeks.

2. Having heard learned counsel appearing for the petitioners, we

not inclined to grant any ex parte interim stay at this stage.

Prayer made in this regard is rejected.

Signature Verification  
Digitally signed by  
babita.pandey  
Date: 2025.11.10  
17:07:53 IST  
Reason: 

(RASHI GUPTA)  
COURT MASTER (SH)

(AVGV RAMU)  
COURT MASTER (NSH)

True Copy

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**  
**BENCH AT AURANGABAD.**

366/2025  
**CRIMINAL REVISION APPLICATION NO./OF 2025**

**DISTRICT : OSMANABAD.**

Sanjay Hariram Agarwal,

.... APPLICANT

VERSUS

The State Of Maharashtra,

Through Police Station, Osmanabad,

.... RESPONDENT

**SYNOPSIS**

SR NO	DATE	PARTICULARS
1	5.5.2002	That, FIR dated 05.05.2002, registered at Osmanabad Police Station, bearing C.R. No. 106/2002, on a complaint by the Divisional Registrar, Co-operative Societies, Latur, concerning transactions between Osmanabad District Central Co-operative Bank Ltd. ("ODCC Bank") and Home Trade Ltd. ("HTL") for 30 Crores. That, the proceedings were registered as R.C.C. No. 398/2002 before the Ld. Additional Chief Judicial Magistrate, Osmanabad.
2	7.8.2013 & 6.5.2014	That, the discharge application and submissions on draft charge filed by the Applicant were dismissed by orders dated 07.08.2013 and 06.05.2014.

3	08.05.14	That, by order dated 08.05.2014, the Ld. Magistrate framed charges against the Applicant (Original Accused) for offences under Sections 120, 406, 420, 468, 471 r/w 34 of IPC.
4		That, thereafter the trial proceeded and 23 Prosecution Witnesses have been examined, none of whom made any specific depositions against the present Applicant.
5		That, the Applicant filed an application under Section 216 of the Code of Criminal Procedure, 1973, seeking alteration of charges, inter alia, on the ground that charges under Section 406 (Criminal Breach of Trust) and Section 420 (Cheating) IPC are mutually antithetical and cannot legally co-exist.
6	13.10.25	That, the Ld. Additional Chief Judicial Magistrate, Osmanabad, by the impugned order dated 13.10.2025, erroneously rejected the said application, holding that the charges were properly framed in view of Section 221 Cr.P.C. as it was "doubtful which of the several offences the facts may constitute".
7		Being aggrieved and dissatisfied by the impugned order dated 13.10.2025, the Applicant has preferred this Criminal Revision Application.

**POINTS TO BE CONSIDERED :-**

1. Whether the Ld. Magistrate has committed a palpable error in law by sustaining charges under Section 406 IPC and Section 420 IPC simultaneously, when the said offences are legally antithetical and mutually exclusive, as authoritatively held by the Hon'ble Supreme Court in *Delhi Race Club Ltd. v. State of U.P.*?
2. Whether the Ld. Magistrate's reliance on Section 221 Cr.P.C. is legally sustainable, or whether it constitutes a misapplication of law, particularly when the Magistrate has failed to articulate any specific, reasoned doubt and has invoked the section to justify framing logically impossible, contradictory charges?
3. Whether the simultaneous framing of these antithetical charges causes grave and inherent prejudice to the Applicant, rendering a fair defense impossible and thereby vitiating the trial in violation of Article 21 of the Constitution?
4. Whether the Ld. Magistrate erred in failing to appreciate that the dispute, as per the charge-sheet, is fundamentally commercial and civil in nature, and that the continuation of criminal proceedings amounts to an abuse of the process of law?

**ACT AND RULES :**

1. The Code of Criminal Procedure, 1973 (Corresponding to Bharatiya Nagarik Suraksha Sanhita, 2023)
2. The Indian Penal Code, 1860 (Corresponding to Bharatiya Nyaya Sanhita, 2023)

**AUTHORITIES :-**

1. *Delhi Race Club Ltd. v. State of U.P.*, 2024 SCC OnLine SC 2248 (also cited as (2024) 10 SCC 690)



PLACE : AURANGABAD

NIKHIL S. JAJU

DATE : 15/11/2025.

ADVOCATE FOR APPLICANT.

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**  
**BENCH AT AURANGABAD**

**CRIMINAL REVISION APPLICATION NO. OF 2025.**

**DISTRICT : OSMANABAD.**

IN THE MATTER OF SECTION 397 OF  
 CRIMINAL PROCEDURE CODE,  
 CORRESPONDING SECTION 438 OF  
 BNSS.

AND

IN THE MATTER OF ORDER DATED  
 13.10.2025, PASSED BY THE LD.  
 ADDITIONAL CHIEF JUDICIAL  
 MAGISTRATE, OSMANABAD IN R.C.C.  
 NO. 398/2002.



1] **Sanjay Hariram Agarwal,**  
 Age : 60 Years, Occu, : Business,  
 R/o 7 Hari Sava Street, Kidderpore,  
 Kolkata-700023, West Bengal.

**...APPLICANT**

(Original Accused)

**VERSUS**

*S. M. Wanshi*

1] The State Of Maharashtra,  
 Through Police Station, Osmanabad,  
 Tq. & Dist. : Osmanabad.  
 (Copy to be Served on the Public  
 Prosecutor at Bombay High Court  
 Bench At Aurangabad.)

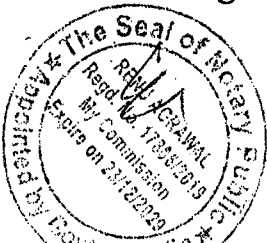
...RESPONDENTS

TO,  
 THE HON'BLE CHIEF JUSTICE AND  
 OTHER HON'BLE PUISNE JUDGES  
 OF THIS HON'BLE HIGH COURT OF  
 JUDICATURE OF BOMBAY BENCH  
 AT AURANGABAD.

HUMBLE REVISION APPLICATION OF  
 THE APPLICANT ABOVE NAMED.

**MOST RESPECTFULLY SHOWETH AS UNDER:-**

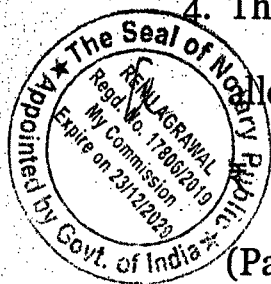
1. The present Revision Application is filed against the order dated 13.10.2025, passed by the Ld. Additional Chief Judicial Magistrate, Osmanabad in R.C.C. No. 398/2002, whereby the Learned Magistrate has rejected the Petitioner's application filed under



*S. S. S. S.*

Section 216 of the Code of Criminal Procedure, 1973, seeking alteration of charges.

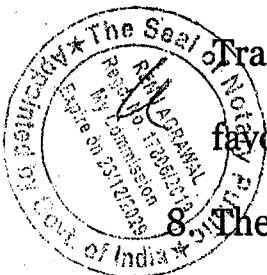
2. The said case arises out of an FIR dated 05.05.2002, registered at Osmanabad Police Station, bearing C.R. No. 106/2002, on a complaint filed by the Divisional Registrar, Co-operative Societies, Latur. The case pertains to transactions between Osmanabad District Central Co-operative Bank Ltd. ("ODCC Bank"), and Home Trade Ltd. ("HTL") relating to the purchase and sale of Government Securities during 2001-2002.
3. The Petitioner is a Director of Home Trade Ltd., a company registered with SEBI and a member of the Bombay, National, and Pune Stock Exchanges. HTL is also registered in the books of Reserve Bank of India for dealing in Government Securities vide registration No. 6-11/82. The company was engaged in lawful trading of Government Securities through recognized exchanges. The alleged transactions were carried out in the ordinary course of business.
4. The prosecution case according to the record, is that all ten accused allegedly entered into a criminal conspiracy to cheat ODCC Bank of 30 crores. At the relevant time, deceased Accused No. 1 (Pawanraje Nimbalkar) was the Chairman of ODCC Bank and



S. N. Agrawal

Accused No. 10 (Sunil Kedar) was the Chairman of Nagpur District Central Co-operative Bank Ltd. ("NDCC Bank").

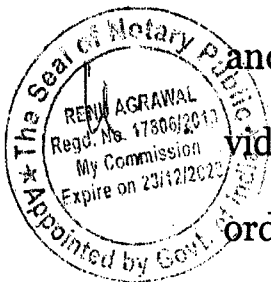
5. It is alleged that Sunil Kedar approached Pawanraje Nimbalkar and offered a deposit of ₹ 30 crores from NDCC Bank to ODCC Bank, which was then to be invested in Government Securities through Home Trade Ltd. Pawanraje Nimbalkar allegedly accepted the deal and on 31<sup>st</sup> January 2002, the NDCC Bank transferred the amount of Rs. 30/- Crores into the ODCC Bank's account bearing Current Account No. 73/4701 in Maharashtra State Co-operative Bank.
6. It is alleged that on 1<sup>st</sup> February 2002, this amount was credited to the account of HTL in its account bearing Current Account No. 3A/17031 in Maharashtra State Co-operative Bank for purchase of Government Securities. Thereafter, Home Trade issued contract notes and receipts to ODCC Bank purportedly for the purchase of Government Securities. It is alleged that HTL further credited ₹ 29.99 crores to the NDCC Bank on 1<sup>st</sup> February 2002.
7. It is alleged that when ODCC Bank did not receive GOI securities, it demanded either delivery of securities or refund of money. Home Trade issued a cheque dated 20.04.2004 for ₹ 30.89 crores in favour of ODCC Bank, which was later dishonoured on 23.04.2004.
8. The first informant before the Police was Pawanraje Nimbalkar who submitted an application to Dy. Commissioner of Police, EoW CB



S. Narayana

CID Mumnai dated 29/04/2002 against Sunil Kedar, Chairman, Nagpur District Central Co-operative Bank Ltd. ("NDCC Bank") and others.

9. Another complaint was registered by Shri B.P. Rathod, Divisional Sub-Registrar, Co-operative Societies, Latur, at Osmanabad City Police Station alleging criminal breach of trust and cheating by the office-bearers of ODCC Bank. It was alleged that ODCC Bank invested ₹ 30 crores through Home Trade for purchase of Government Securities, but the bank did not receive physical securities and suffered a loss.
10. The complaint filed by Pawanraje was subsequently transferred to Osmanabad Police Station, and merged into the present proceedings as R.C.C. No. 398/2002.
11. Parallely proceedings under Section 138 of the NI Act were initiated and the first hearing date was on 15.12.2005, which were dismissed on 01.08.2015 for non-prosecution.
12. In proceedings in R.C.C. No. 398/2002, the discharge application and the submissions made under the draft charge were dismissed vide orders dated 07.08.2013 and 06.05.2014. True copy of the order dated 07.08.2013 is annexed herewith and marked as **Exhibit – A**. True copy of the order dated 06.05.2014 is annexed herewith and marked as **Exhibit – B**.



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13. The charges were framed against the Petitioner and other accused for offences under Sections 120-B, 406, 420, 468, 471 r/w 34 IPC by the order dated 08.05.2014. The copy of order dated 08.05.2014, is annexed herewith and marked as **Exhibit – C.**

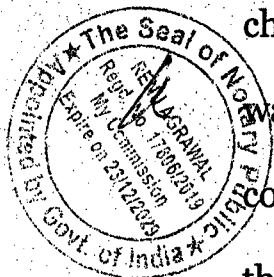
14. It is submitted that 23 Prosecution witnesses have been examined in this case so far and none of them had made any specific depositions against the petitioner.

15. Subsequently, The Applicant on 18.08.2025 filed an application under Section 216 Cr.P.C. before the Learned Magistrate, inter alia, contending that:

A. The charges framed under Sections 406 and 420 IPC are mutually antithetical and cannot legally co-exist; and

B. The entire dispute is commercial in nature, arising out of contractual dealings in Government Securities, and at best discloses a civil liability. True copy of Application dated 18.08.2025 is annexed herewith and marked as **Exhibit – D.**

16. However, by the impugned order dated 13.10.2025, the Learned Magistrate rejected the application, holding inter alia that both charges were properly framed in view of Section 221 Cr.P.C., since it was “doubtful which of the several offences the facts may constitute.” While doing so, the Learned Magistrate failed to apply the binding precedents specifically brought to the Court’s notice and



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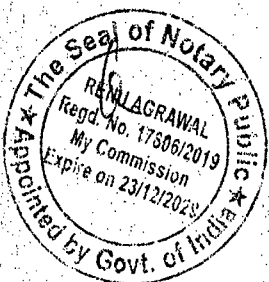
distinguished the judgment of the *Hon'ble Supreme Court in Delhi Race Club Ltd. v. State of U.P., 2024 SCC OnLine SC 2248*, without assigning any cogent or legally sustainable reasoning. The impugned order, therefore, reflects a clear non-application of mind to the ratio decidendi of binding authority and proceeds contrary to settled principles of criminal law. True copy of the 13.10.2025, passed by the learned Chief Judicial Magistrate, Osmanabad, is annexed herewith and marked as **Exhibit – E.**

17. Hence, the present Revision Petition is being filed on the following, amongst other, grounds:

**:GROUNDS:**

A. 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.

A.1. 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



S. by Renu

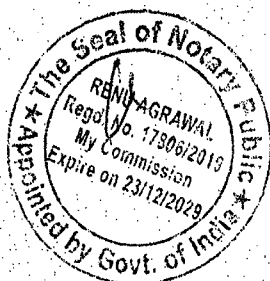


“In order to constitute a criminal breach of trust (Section 406 IPC): -

- 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”

A.4. 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.

A.5. 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

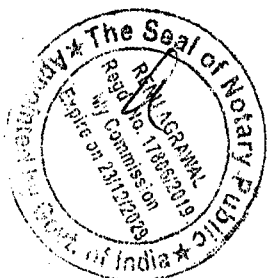
*S. Anuradha*

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'."

A.6. 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"

A.7. Subsequent failure to fulfil a promise, or inability to perform a contract, does not by itself constitute cheating. Here, the



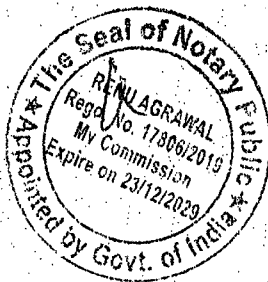
S. Agrawal

intention to commit the act or to induce the person should be there from the beginning.

A.8. 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

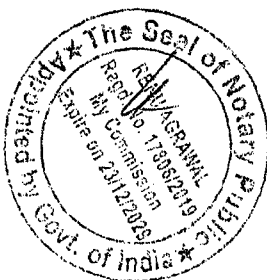


S. Agrawal

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**

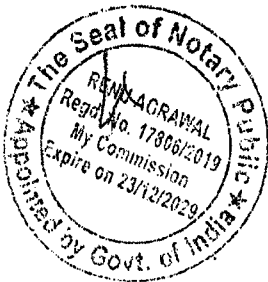


*Siby Ramani*

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.”

A.9. 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**



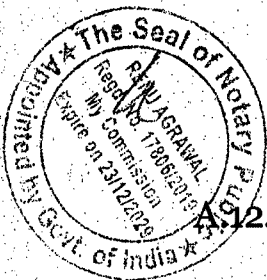
S. Agrawal

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

A.10. This proposition of law has been furthered in *Arshad Neyaz Khan v. State of Jharkhand, 2025 SCC OnLine SC 2058*.

A.11. In the impugned order dated 13.10.2025, however, the Learned Magistrate observed that “the facts of the above said authorities and the facts of the matter in hand are totally different.” With great respect, this observation constitutes a palpable error on the face of the record. The binding force of a precedent lies in its ratio decidendi, the principle of law declared by the Court. The *Delhi Race Club judgment (Supra)* does not rest on narrow fact-specific peculiarities but lays down a clear rule of law distinguishing the ingredients of Sections 406 and 420 IPC. In essence, the judgment reiterates what has been the law since decades. That legal distinction applies squarely to the present case, where the same transaction is alleged to involve both “entrustment” and “inducement.”

A.12. A court may distinguish a precedent only after demonstrating, through reasoned analysis, that the legal principle laid down therein is inapplicable to the facts before it. The impugned



S. D. M. M. M. M.

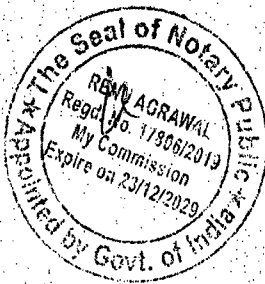
order contains no such reasoning, it merely asserts factual dissimilarity and declares the precedent inapplicable. This constitutes non-application of mind to binding authority and a clear misdirection in law.

A.13. The Ld. Magistrate failed to appreciate the well-settled legal position existing even before the Delhi Race Club judgment and recognised and reiterated in the Delhi Race Club judgment, while dismissing the application made under 216 of CrPC.

B. That the Learned Magistrate erred in law in invoking Section 221 of the Code of Criminal Procedure, 1973, without any specific doubt being demonstrated and without explaining how the confusion in offence actually existed.

B.1. It is respectfully submitted that Section 221 Cr.P.C., which permits framing of multiple or alternative charges "where it is doubtful which of several offences the facts which can be proved will constitute", is an exception to the general rule under Section 218 Cr.P.C., and is to be applied sparingly and only when there is genuine uncertainty in law or fact as to the precise offence.

B.2. The jurisprudence has consistently held that invocation of Section 221 cannot be used to frame a basket of offences



S. Agrawal

merely because the prosecution has chosen a wide canvas. The Court must record prima facie material showing a doubt as to which offence is made out, the nature of the doubt, and why charges are being maintained.

B.3. In the present case, the impugned order dated 13.10.2025 relies on Section 221 Cr.P.C., stating that "it was doubtful which of the several offences the facts may constitute." However, the Learned Magistrate has not identified the specific facts which gave rise to such doubt, recorded what was the doubt, or explained why either of the offences could not be chosen.

B.4. The absence of any reasoning as to the nature of doubt renders the use of Section 221 misplaced. The Magistrate has simply recited the text of the provision without applying it to the material facts of the case. This is contrary to established law which demands that a court exercising power under Section 221 must articulate the reason for the doubt and confine the framing of multiple or alternative charges to the scope of that doubt.



B.5. Moreover, the invocation of Section 221 in the context of antithetical offences is legally impermissible. If the two offences are mutually destructive, there is no genuine doubt as

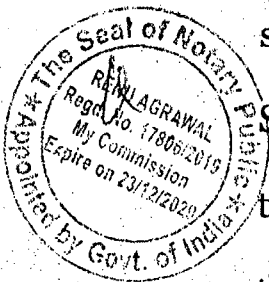
S. M. Agrawal

to which offence is made out, the law requires the court to decide which factual characterisation is prima facie applicable and frame accordingly. Resort to Section 221 in such a situation constitutes misuse of the exception and results in a distortion of the criminal process.

B.6. In view of the above, the learned Magistrate's invocation of Section 221 Cr.P.C., in the absence of any indication of real doubt, is manifestly improper and amounts to a material irregularity and error in law. The impugned order refusing to alter the charges on that basis is liable to be set aside.

C. That the Learned Magistrate erred in not recognising the grave prejudice caused to the Petitioner due to the simultaneous framing of antithetical charges under Sections 406 and 420 IPC.

C.1. The Learned Magistrate, while rejecting the Petitioner's application under Section 216 Cr.P.C., has observed that "nothing has been brought on record by the accused No. 7 to show that due to the framing of both the charges under Sections 406 and 420 IPC, actual prejudice has been caused to the accused in taking defence." It is submitted with respect, this finding is manifestly erroneous and contrary to settled principles of criminal law. The very act of simultaneously framing mutually destructive charges inherently and



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inevitably causes grave prejudice to the accused; such prejudice does not require separate proof by evidence.

C.2. The object of framing of charge, is to provide the accused with clear, precise, and unambiguous notice of the exact offence he is called upon to answer. Where charges are contradictory, uncertain, or based on inconsistent factual premises, the accused is deprived of this statutory and constitutional safeguard.

C.3. The offences of cheating and criminal breach of trust proceed on mutually exclusive premises, the former requiring proof of dishonest intention at the inception of the transaction, and the latter presupposing lawful entrustment and subsequent dishonest misappropriation. By allowing both charges to stand concurrently in respect of the same transaction, the Learned Magistrate has compelled the petitioner to defend two diametrically opposite factual narratives, an exercise which is legally impossible and procedurally unfair.

C.4. The prejudice caused to the petitioner is multi-faceted and self-evident:

- i. The petitioner is rendered uncertain of the exact nature of accusation, whether the prosecution alleges inducement at inception or misappropriation after entrustment. Such

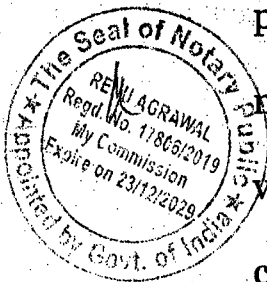


S. Agarnal

uncertainty vitiates the clarity of the charge, defeating the purpose of Section 211 Cr.P.C.

- ii. The defence stand required for the two offences are mutually incompatible. To meet a charge of cheating, the Petitioner must show absence of dishonest intention at inception; to meet a charge of breach of trust, he must show absence of entrustment or dishonest conversion. These positions cannot be simultaneously asserted without undermining one another.
- iii. The evidentiary enquiry and cross-examination also become confused and inconsistent. The same witnesses and documents are examined to prove opposite legal hypotheses, exposing the Petitioner to the risk of contradictory findings and a fractured defence.

C.5. The Learned Magistrate is thus misdirected in insisting that the Petitioner must "bring on record" independent proof of prejudice. The prejudice here arises by operation of law, as a natural consequence of framing contradictory charges in violation of settled legal principles. Furthermore, the constitutional guarantee of fair procedure under Articles 14 and 21 of the Constitution mandates that the accused be tried upon a coherent, legally sustainable charge. A charge which is



*Signature*

internally inconsistent and factually irreconcilable violates this guarantee and renders the trial process fundamentally unfair.

C.6. Accordingly, the finding that no prejudice has been caused is unsustainable both in law and on facts. The simultaneous framing of antithetical charges under Sections 406 and 420 IPC has caused grave and irreparable prejudice to the petitioner, undermining his right to a fair trial and resulting in a miscarriage of justice. The impugned order is therefore liable to be set aside on this ground alone.

D. It is respectfully submitted that the allegations contained in the charge-sheet, even if taken at their face value, disclose at best a civil dispute arising from a commercial transaction, and do not constitute any criminal offence under the Indian Penal Code. The invocation of criminal law in such circumstances is impermissible and amounts to abuse of process.

D.1. The Hon'ble Supreme Court, in a recent and strong disapproval of the growing tendency to criminalise civil and commercial disputes, observed in *M/s Shikhar Chemicals v. State of U.P.*, 2025 SCC OnLine SC 1643, as under:

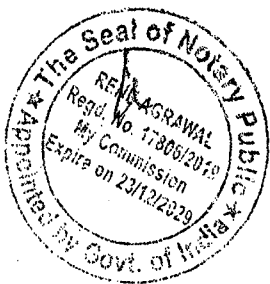
*"The Magistrate unfortunately remained unmindful of the fact that even as per the complainant's own*



*Sd/-*

*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."*

D.2. The Court emphatically reiterated the settled principle that where the dispute arises from a commercial contract, such as sale, supply, or investment transactions, the remedy lies in civil law for recovery or damages, not in criminal prosecution. The criminal law cannot be used to enforce contractual obligations or to pressurise parties in commercial dealings.

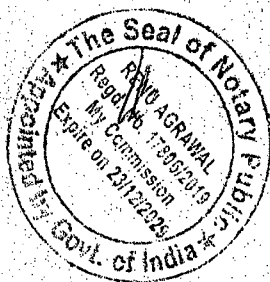


*Ravi Agrawal*

D.3. In the present case, the admitted position from the charge-sheet and the documentary evidence is that the transactions between ODCC Bank and Home Trade Ltd. were commercial in nature, sale and purchase of Government Securities conducted on a principal-to-principal basis. The alleged failure to deliver securities or honour payment, at the highest, gives rise to a civil liability. The allegations do not disclose dishonest intention, deception, or any act done with criminal mens rea.

D.4. The recourse to criminal prosecution in respect of such transactions, especially where documentary evidence establishes the existence of valid contractual terms, arbitration clauses, and corporate records, is a clear attempt to give a civil dispute a criminal colour. Permitting such prosecution to continue would be contrary to the well-settled distinction between civil breach and criminal wrongdoing and would result in grave miscarriage of justice.

D.5. In view of the foregoing, it is submitted that the dispute between the parties is purely civil in nature, arising from a contractual transaction, and does not attract the ingredients of any of the penal provisions alleged. The continuation of criminal proceedings in such a matter is manifestly abusive

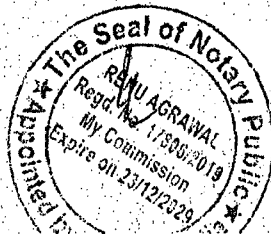


S. Agrawal

and contrary to settled law, and the same deserves to be quashed.

E. In view of the foregoing grounds, it is most respectfully submitted that the impugned order dated 13.10.2025 suffers from patent legal infirmities, and misappreciation of binding precedents. The Learned Magistrate has erred in simultaneously sustaining charges under Sections 406 and 420 IPC, which are legally antithetical; has misapplied Section 221 Cr.P.C. without recording any genuine or reasoned doubt; and has failed to recognise the grave prejudice inherently caused to the Applicant by such contradictory framing of charges.

18. The impugned judgment and order is dated 14/11/2024. The revision is therefore filed within period of limitation.
19. The applicant undertakes to give the English translation of Marathi documents as and when directed by this Hon'ble Court.
20. The applicant seeks liberty to add, amend, modify or delete any of the paragraphs or ground of the present Criminal Revision as and when it is necessary.
21. The applicant has not filed any other application before any other court, touching to the subject matter of this Criminal revision.
22. The applicant undertakes to remove the office objections, if any, as and when required.

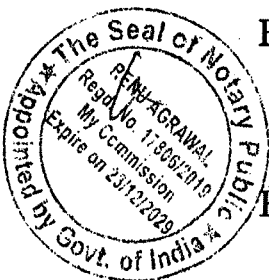


Signature

23. The applicant has not received any notice of caveat till today.

**24. HENCE IT IS PRAYED THAT :-**

- A. That Criminal Revision Application may kindly be allowed.
- B. Record and proceedings in R.C.C. No. 398 of 2002, pending before the Court of the Learned Additional Chief Judicial Magistrate, Osmanabad may kindly be called for;
- C. The impugned order dated 13.10.2025 passed below Exhibit 953 in R.C.C. No. 398 of 2002, quashed and set aside and the application Exh. 953, under Section 216 Cr.P.C. be allowed by directing alteration of the contradictory and antithetical charges under Sections 406 and 420 and;
- D. Pending Hearing and final disposal of present revision application the further proceedings in R.C.C. No. 398 of 2002, may kindly be stayed.
- E. Till then Ad-interim relief in terms of prays clause 'D' may kindly be granted.
- F. And or to grant any other relief to which present applicant is found entitled to in the facts and circumstances of the case to secure the ends of justice.



*S. M. Arun*

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

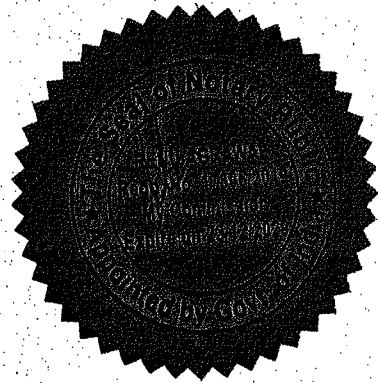
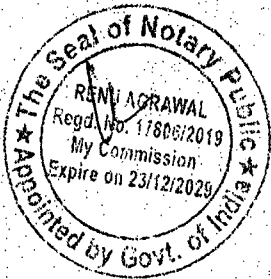
PLACE : AURANGABAD

NIKHIL S. JAJU.

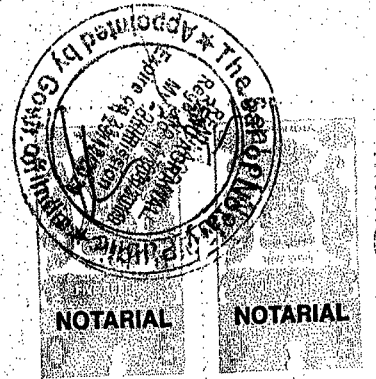
DATE : 15/11/2025

ADVOCATE FOR APPLICANT.

*Subscribed*



Certified That The Deponent  
Shri / Smt. / KM : *Sundar Hanuman*  
S/o, W/o R.o.....  
I identified by Shri / Smt..... Has Solemnly  
affirmed before me a Deponent..... as  
SI. No. *9041/25* that the contents of the affidavit  
Which have been read & explained to him are true &  
correct to his knowledge



True Copy

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CrI.M.P. No. \_\_\_\_\_ of 2026

IN

Special Leave Petition (CrI.) No. \_\_\_\_\_ of 2026

IN THE MATTER OF:

Sanjay Hariram Agarwal

...Petitioner

Versus

The State of Maharashtra

...Respondent

APPLICATION FOR CONDONATION OF DELAY

To,

The Hon'ble the Chief Justice of India and his Companion Justices of the  
Hon'ble Supreme Court of India;

The humble application of the petitioner above-named;

**MOST RESPECTFULLY SHEWETH:**

1. The Petitioner above named respectfully submits that this petition seeking special leave to appeal is filed against the Final judgment and order dated 11.12.2025 passed by the High Court of Bombay Bench at Aurangabad in Criminal Revision Application No.366 of 2025 whereby the Hon'ble High Court, while partly allowing the revision held that charges under Sections 406 and 420 of the Indian Penal Code, 1860 are antithetical to each other and cannot co-exist and accordingly directed the Ld. Magistrate to re-frame the charge, had erroneously directed the said charges to be framed in the alternative, which direction is contrary to the settled law and causes grave prejudice to the Petitioner in the conduct of his defense.

2. That the accompanying Special Leave Petition is directed against the final judgment and order dated 11.12.2025 passed by the High Court of Judicature at Bombay, Bench at Aurangabad, in Criminal Revision Application No.366 of 2025 whereby the Hon'ble High Court, while holding that offences under Sections 406 and 420 IPC are antithetical and incapable of co-existing, nevertheless directed that the said offences be reframed alternatively.

3. That there is a delay of 63 days in filing the accompanying Special Leave Petition. The present application is being filed seeking condonation of the said delay.

4. That after passing of the impugned order the Petitioner sought legal opinion regarding the effect of alternatively framing offences under Sections 406 and 420 IPC despite the High Court itself holding the said offences to be antithetical.

5. That during the course of legal consultation and examination of the issue, the Petitioner was advised regarding the broader legal position emerging from the judgment of this Hon'ble Court in Delhi Race Club (1940) Ltd. v. State of Uttar Pradesh, (2024) 10 SCC 690 as well as proceedings pending before this Hon'ble Court involving similar questions concerning coexistence of offences founded upon mutually destructive ingredients. The Petitioner was accordingly advised to approach This Hon'ble Court.

6. That in the meantime, the learned trial court, pursuant to the impugned judgment, proceeded to reframe charges under Sections 406 and 420 IPC alternatively.

7. That the Petitioner collected and collated the relevant records and documents necessary for filing the accompanying Special Leave Petition, including the consequential order passed by the learned trial court and documents pertaining to connected proceedings.

8. That the delay in filing the accompanying Special Leave Petition is bona fide, unintentional and neither deliberate nor attributable to negligence. The present matter raises a pure question of law concerning the legality of alternatively framing mutually destructive charges after the High Court itself has held that the offences are antithetical and incapable of co-existing.

9. That grave prejudice would be caused to the Petitioner if the delay is not condoned, whereas no irreversible prejudice would be caused to the Respondent in the event the delay is condoned and the matter is considered on merits.

10. That the Petitioner has a good prima facie case on merits and the balance of convenience also lies in favour of condonation of the delay.

11. That this Hon'ble Court has consistently held that substantial justice deserves to prevail over technicalities, particularly where important questions of law arise for consideration.

12. That the delay has occurred due to the bona fide reasons stated hereinabove and the same deserves to be condoned in the interest of justice.

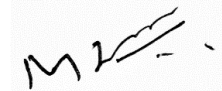
### **PRAYER**

It is therefore most respectfully prayed that this Hon'ble Court may gracious be pleased to;

- a. Condone the delay of 63 days in filing the special leave petition against the final judgment and Order dated 11.12.2025 passed by the Hon'ble High Court of Bombay Bench at Aurangabad in Criminal Revision Application No.366 of 2025; and

- b. Pass such other/orders as this Hon'ble Court may deem just and proper in the facts and circumstances of the case.

Filed by:



(MILIND KUMAR)  
Advocate for the Petitioner

Filed on: 13.05.2026

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

Crl.M.P. No. \_\_\_\_\_ of 2026

IN

Special Leave Petition (Crl.) No. \_\_\_\_\_ of 2026

IN THE MATTER OF:

Sanjay Hariram Agarwal

...Petitioner

Versus

The State of Maharashtra

...Respondent

APPLICATION FOR EXEMPTION FROM FILING OFFICIAL  
TRANSLATION

To,

The Hon'ble Chief Justice of India and His Companion Judges of the  
Supreme Court of India;

The humble application of the petitioner above-named;

MOST RESPECTFULLY SHOWETH:

1. The Petitioner above named respectfully submits that this petition seeking special leave to appeal is filed against the Final judgment and order dated 11.12.2025 passed by the High Court of Bombay Bench at Aurangabad in Criminal Revision Application No.366 of 2025 whereby the Hon'ble High Court, while partly allowing the revision held that charges under Sections 406 and 420 of the Indian Penal Code, 1860 are antithetical to each other and cannot co-exist and accordingly directed the Ld. Magistrate to re-frame the charge, had erroneously directed the said charges to be framed in the

alternative, which direction is contrary to the settled law and causes grave prejudice to the Petitioner in the conduct of his defense.

2. That the Annexure P-1 filed herewith was originally in vernacular language i.e. Marathi and the Counsel for the petitioner have got the same translated into English by an Advocate.
3. That it is in the interest of justice that the petitioner may be exempted from getting the Annexure P-1 translated by an Official Translator.

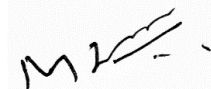
PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Allow this application and accept the English translation of the Annexure P-1 and exempt the Petitioner from filing Official Translation of the same; and
- b) pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Filed By:

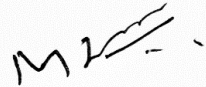
Filed on: 13.05.2026



(MILIND KUMAR)  
Advocate for the Petitioner

**FIR DETAILS**

1.	Diary No.	Diary No. of 2026
2.	Date of Lodgement of FIR/ Complaint	FIR No.106/2002
3.	Date of Occurrence	Dated: 08.05.2002
4.	Police Station address with State	PS: Osmanabad, Maharashtra
5.	Date of filing of first charge sheet/challan	Chargesheet No.398 of 2002 dated 14.09.2002
6.	Whether tried by the Court of Magistrate	Court of Addl. Chief Judicial Magistrate, Osmanabad, Maharashtra
7.	Whether tried by the Court to Sessions.	N/A

**SECTION IB**

**(MILIND KUMAR)**

Advocate for the Petitioner

Filed on: 13.05.2026

## SECTION II

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
SLP (CRIMINAL) NO.....OF 2026

IN THE MATTER OF

Sanjay Hariram Agarwal

...Petitioner

Versus

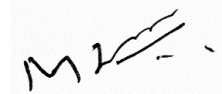
The State of Maharashtra

...Respondent

## INDEX

S. No.	Particulars	Copies	Court Fee
1.	List of Dates	1+3	
2.	Impugned order	1+3	
3.	Special Leave Petition with affidavit	1+3	
4.	Annexures P-1 to P-9	1+3	
5.	Application for condonation of delay.	1+3	
6.	Application for exemption from O/T	1+3	
7.	Vakalatnama		
	Total		

Filed By:


**(MILIND KUMAR)**

Advocate for the petitioner  
639, 6<sup>th</sup> Floor, D-Block,  
Addl. Building Complex,  
Supreme Court of India  
New Delhi 110001

**Code No.1566**

Mob.: 9868161390

E-mail: [milindkraor@gmail.com](mailto:milindkraor@gmail.com)

Filed on: 13.05.2026

**Ashok Yadav****9953307833; 8287009298****IC No.3551**

132  
IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CrI.) NO. \_\_\_\_\_ OF 2025

**IN THE MATTER OF:**

Sanjay Hariram Agarwal

Versus

...Petitioner

The State of Maharashtra

...Respondent

**VAKALATNAMA**

I, Sanjay Hariram Agarwal S/o Shri Hariram Agarwal, on behalf of petitioner, in the above mentioned matter, do hereby appoint and retain **(MILIND KUMAR)**, Advocate-on-Record, Advocate of the Supreme Court to act and appear for me/us in the above Suit / Appeal / Petition / Reference and on my/our behalf to conduct and prosecute (or defend) or withdraw the same and all proceedings that may be taken in respect of any application connected with the same or any decree, order passed therein, including proceeding in taxation and application for Review, to file and obtain return of documents and to deposit and receive money on my/our behalf in the said Suit / Appeal / Petition / Reference and in applications of Review, and to represent me/us and to take all necessary steps on my/our behalf in the above matter. I/We agree to ratify all acts done by the aforesaid Advocate in pursuance of this authority.

Dated this the **12<sup>th</sup>** day of May, 2026

Accepted & Identified/Verified/Certified

  
**(MILIND KUMAR)**

Advocate-on-Record

639, 6<sup>th</sup> Floor, Lawyers Chamber,

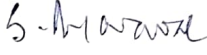
Addl. Building Complex,

Supreme Court of India,

New Delhi-110001

Mob:- 9868161390; 9953307833

E-mail: [milindkraor@gmail.com](mailto:milindkraor@gmail.com)



(Signed)

Petitioner(s)

**MEMO OF APPEARANCE**

To,

The Registrar

Supreme Court of India,

New Delhi

Sir,

Please enter my appearance on behalf of the Petitioner(s)/Appellant(s)/ Respondent(s)/ Intervenor in the matter above mentioned.

Yours Faithfully

  
**(MILIND KUMAR)**  
Advocate for the petitioner

Dated: 12.05.2026