

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

CASE NO. 387 OF 2023

IN

FIR No. I-274/2002 (Umra Police Station, Surat)

State of Maharashtra

Complainant

Vs.

Sanjay Hariram Agarwal

Accused No. 1

(Applicant)

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

MAY IT PLEASE THIS HON'BLE COURT:

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

1. The present application is filed on behalf of Applicant/Accused No. 1, Mr. Sanjay Hariram Agarwal, seeking discharge under Section 262 of BNSS/Section 239 of the CrPC, 1973, in connection with C.C. No. 389 of 2023 pending before this Hon'ble Court.
2. The Applicant has been arrayed as an accused pursuant to FIR No. I-274/2002 dated 02.07.2002, lodged at the instance of Surat Mahila Nagarik Sahakari Bank Ltd. (hereinafter referred to as "the Complainant Bank"), wherein allegations have been made in relation to alleged non-delivery of certain Government Securities in the course of commercial transactions between the Complainant Bank and Home Trade Limited (hereinafter referred to as "HTL"). Upon investigation, Chargesheet dated

10.01.2004 came to be filed alleging commission of offences under Sections 465, 467, 468, 471, 420, 114 and 120-B r/w 34 of the Indian Penal Code against several accused persons, including the present Applicant. The Applicant was arrayed as an accused as he was at the relevant time one of the directors of HTL.

3. That thereafter, the Ld. Trial Court framed charges under Sections 420, 467, 468, 471, 114 and 120-B read with Section 34 IPC, which order was assailed before the Hon'ble High Court. The Hon'ble High Court has been pleased to remit the matter back to the Ld. Trial Court. Consequently, the matter presently stands at the pre-charge stage, where the Applicant is entitled to seek discharge on consideration of the police report and the material relied upon by the prosecution.
4. At the outset it is submitted that there is no allegation whatsoever against the Applicant in his personal capacity. The Applicant has been implicated solely by reason of his designation as a Director of Home Trade Limited at the relevant time. It is settled law that the Indian Penal Code does not create vicarious criminal liability in the absence of a specific statutory provision to that effect. In prosecutions under the IPC, directors or officers of a company cannot be mechanically implicated merely because of their position. In the present case, the prosecution material is completely bereft of any allegation against the Applicant, and no prima facie material exists to sustain any of the charges alleged under Sections 465, 467, 468, 471, 420, 114 and 120-B read with Section 34 of the Indian Penal Code. In such circumstances, the continuation of proceedings against the Applicant herein would amount to a gross abuse of process of law.

5. Under Section 239 CrPC, if upon consideration of the police report and the documents submitted, the Ld. Magistrate finds that the charge against the accused is groundless, the accused shall be discharged.
6. The real test for determining whether the charge should be considered groundless under Section 239 CrPC is that if the material relied upon in the chargesheet and those produced by the accused are such that no case whatsoever is made out against the accused, the accused should be discharged under Section 239 CrPC. Hence, at the current stage, this Ld. Court must consider whether the materials relied upon by the prosecution against the Applicant herein for the purpose of framing of the charge and those referred to by the accused make out any case at all.
7. That the application is made on the following grounds.

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

8. It is respectfully submitted that the present proceedings are a clear attempt to give a criminal colour to what is, on the Complainant's own showing, a commercial dispute arising out of Government Securities transactions undertaken by the Bank in discharge of its statutory obligations under the Banking Regulation Act and directions of the Reserve Bank of India. The allegations, even if taken at their highest, relate only to non-delivery of Government of India Securities and an alleged consequent financial liability, which squarely falls within the realm of civil law remedies. The grievance of the Bank is thus one arising out of alleged contractual non-performance and commercial dealings between two corporate entities and does not disclose any independent criminal intent or dishonest inducement so as to justify invocation of penal provisions.

9. The entire prosecution narrative, as reflected from the FIR and chargesheet, is founded upon contract notes, banking transactions, and alleged non-performance of certain contractual obligations. The materials relied upon by the prosecution themselves disclose that the Complainant Bank had been carrying out Government Securities transactions through Home Trade Limited from January 2000 onwards, and that during the period 31.10.2001 to 27.02.2002, the complainant Bank purchased four Government Securities through HTL for an aggregate value of ₹9,68,10,666.67 (Rupees Nine Crores Sixty-Eight Lakh Ten Thousand Six Hundred Sixty-Six and Sixty-Seven Paise Only), for which payments were made through cheques drawn on HDFC Bank. Multiple prior transactions had been successfully concluded. The dispute arises only in respect of certain subsequent transactions, which at best gives rise to a claim of commercial non-performance or breach of contractual obligations.
10. Significantly, there is not a single material on record to suggest any fraudulent intent at the inception of the transaction, or any dishonest inducement attributable to the Applicant. Mere non-fulfilment of contractual obligations or alleged financial loss cannot, by itself, give rise to offences of cheating or forgery. In this regard, the Hon'ble Supreme Court has repeatedly deprecated the growing tendency to give criminal colour to civil disputes. In *M/s Shikhar Chemicals v. State of U.P., 2025 SCC OnLine SC 1643*, the Hon'ble Apex Court observed:

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

offences... It was expected of the High Court to know the well-settled position of law that in cases of civil dispute a complainant cannot be permitted to resort to criminal proceedings as the same would amount to abuse of process of law.”

11. It is a settled law that mere breach of contract cannot give rise to criminal liability unless fraudulent or dishonest intention is shown at the inception of the transaction. The Hon'ble Supreme Court in ***Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168*** has observed:

“15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

(Emphasis supplied)

12. That pertinently, the Company's prior and subsequent conduct, including the long-standing commercial relationship in Government Securities transactions with the Complainant Bank from January 2000 onwards and the honouring of multiple prior transactions, clearly indicates bona fide commercial dealings and negates any allegation of fraudulent intent at inception.

13. That the Hon'ble Apex Court has repeatedly cautioned that disputes which are essentially civil must not be dressed up as criminal offences (***Paramjeet Batra v. State of Uttarakhand, Usha Chakraborty v. State of West Bengal, Naresh Kumar v. State of Karnataka***).

14. It is pertinent to mention that the Hon'ble Supreme Court has further clarified in ***Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293***, that every breach of contract does not amount to cheating, and criminal

prosecution cannot be invoked unless fraudulent intention at the inception of the transaction is clearly established. It was observed that:

... 8. From the decisions cited by the appellant, the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

(Emphasis supplied)

15. Thus, it is most humbly submitted that the criminal process cannot be permitted to be used as a tool for recovery of money or enforcement of contractual obligations. The continuation of the present criminal proceedings is founded entirely on alleged commercial non-performance and is therefore vexatious and amounts to a misuse of the criminal machinery. The charge against the Applicant is therefore ex facie groundless and the Applicant deserves to be discharged at the threshold.

CHEATING

16. It is respectfully submitted that even if the allegations contained in the chargesheet are accepted in their entirety, the essential ingredients of the offence punishable under Section 420 of IPC are not disclosed against the Applicant.

17. Section 415 IPC defines “cheating” as follows:

“Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ‘cheat’.”

18. 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”

19. It is further submitted that Section 420 IPC requires (i) deception of a person, (ii) fraudulent or dishonest inducement at the inception of the transaction, and (iii) delivery of property or alteration of a valuable security pursuant to such inducement. Dishonest intention at the very inception is the foundational element of the offence. Subsequent failure to fulfil a promise, or inability to perform a contract, does not by itself constitute cheating.

20. The Hon'ble Supreme Court in ***Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1***, as reiterated in ***Arshad Neyaz Khan v. State of Jharkhand (2025) SCC Online SC 2058***, has categorically held that the intention at the inception is the gist of the offence of cheating, and that:

17. “42...From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.”

Applying this settled principle, the absence of any dishonest intention at the inception of the transaction completely negates the applicability of Section 420 IPC.

21. Applying the aforesaid settled position, the complaint itself records that the complainant Bank had been carrying out Government Securities purchase and sale transactions through Growth Avenue Company, Ketan Sheth & Co., Euro Asian Securities Limited and thereafter through Home

Trade Limited, and had been purchasing Government Securities through the said company from January 2000 onwards. The complaint further records that during the period 31.10.2001 to 27.02.2002, the complainant Bank purchased Government Securities through Home Trade Limited for an aggregate value of ₹9,68,10,666.67, for which payments were made through cheques drawn on HDFC Bank.

22. That the complaint further records that thereafter, pursuant to discussions between the parties, a new contract dated 30.03.2002 was entered into and ten cheques aggregating to ₹9,40,37,861.07 were issued to the complainant Bank, out of which Cheque No. 984317 dated 11.04.2002 for ₹80,72,206.25 was honoured, clearly showing that the issue was treated as arising from ongoing transactional dealings between the parties.
23. Moreover, neither the Complaint, FIR nor the chargesheet attributes any inducement, communication or act personally committed by the Applicant which caused the Bank to enter into the Government Securities transactions. The complaint itself records that the transactions were undertaken pursuant to decisions of the Bank's Board of Directors, thereby demonstrating that the Bank acted independently, institutionally and on its own assessment, negating any allegation of inducement.
24. Pertinently, the complaint records a continuous trading relationship in Government Securities between the Bank and Growth Avenue Company, M/s. Ketan Sheth & Co., Euro Asian Securities Limited, and thereafter Home Trade Limited. The admitted history of regular purchase, payment, and prior transactional dealings over a long period shows a routine commercial trading relationship, inconsistent with any allegation of fraudulent inception.
25. In *Anil Mahajan v. Bhor Industries Ltd.*, (2005) 10 SCC 228, the Hon'ble Supreme Court held that criminal proceedings for cheating are

liable to be quashed where the allegations disclose only a civil wrong, observing that *“the substance of the complaint is to be seen; if it discloses a civil dispute, the criminal process should not be permitted to continue.”*

The present case falls squarely within that principle.

26. Accordingly, the essential ingredients of the offence under Section 420 IPC are wholly absent. Even taking the prosecution's case at its highest, the allegations reveal at best a breach of contractual obligations, not offences punishable under Section 420 of IPC. The continuation of criminal proceedings against the Applicant would, therefore, amount to a misuse of the criminal process and deserves to be discharged.

FORGERY

27. In order to prove allegations under Sections 465, 467, 468 and 471 of the Indian Penal Code, the ingredients of the offence of forgery as defined under Sections 463 and 464 IPC must first be satisfied. These foundational provisions delineate when a document can be said to be "false" and when its making amounts to "forgery."

28. Section 463 IPC defines forgery as follows:

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

29. Section 464 IPC explains when a person is said to make a false document or electronic record. Broadly, a false document is made when a person dishonestly or fraudulently makes, signs, seals or executes a document intending it to be believed that it was made or signed by another person; or alters or tampers with an existing document without lawful authority;

or causes another to sign or execute a document knowing that such person does not know the contents or the nature of what he is signing.

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

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

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

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

32. In the present case, the charge-framing order refers in general terms to alleged forged documents such as SEBI certificates, Government

Securities contracts and other related documents. However, neither the complaint nor the chargesheet specifies which particular document is alleged to be false, who is alleged to have made such false document, in what manner such document answers the definition of a "false document" under Section 464 IPC, or whether any document was made in the name of another person, altered, forged or obtained by deception. The prosecution case does not specify which particular contract note or document is alleged to have been forged by the Applicant.

33. The allegations in the complaint primarily arise from non-delivery of certain Government Securities pursuant to contract notes, and the dispute centres around performance of contractual obligations rather than identification of any forged document attributable to the Applicant herein.

34. Thus, once the statutory requirement of a "false document" under Sections 463 and 464 IPC is not satisfied, the consequential offences under Section 465 (punishment for forgery), Section 467 (forgery of valuable security, will, etc.) and Section 468 IPC (forgery for the purpose of cheating) cannot survive, as they are entirely dependent upon the existence of forgery in the first place. Similarly, Section 471 IPC presupposes the use of a forged document as genuine, and since the prosecution case does not disclose the existence of any forged document in the first place, the offence under Section 471 IPC is also *ex facie* not made out.

35. Accordingly, the allegations under Sections 465, 467, 468 and 471 IPC are *ex facie* groundless and unsupported by the prosecution material. The Applicant is therefore entitled to be discharged from the said offences.

COMMON INTENTION & CRIMINAL CONSPIRACY

36. It is submitted that the allegations invoking Sections 34 and 120-B of the Indian Penal Code are wholly mechanical and unsustainable, inasmuch as the foundational requirements of common intention or criminal conspiracy are completely absent from the prosecution material.
37. Section 120-B IPC requires proof of an agreement between two or more persons to commit an illegal act or a legal act by illegal means. The essence of conspiracy is the meeting of minds. Mere association or participation in commercial transactions does not constitute conspiracy.
38. In the present case, the complaint itself records that the transactions in question pertain to purchase and sale of Government Securities undertaken by the Complainant Bank through Home Trade Limited by issuance of contract notes and payment of amounts through banking channels. The existence of such long-standing, institutional trading negates any allegation of a concerted criminal design. Neither the complaint nor the chargesheet discloses any specific act, communication or circumstance from which a meeting of minds or prior agreement can be inferred.
39. Similarly, the invocation of Section 34 IPC is unsustainable in the absence of any material showing common intention. Common intention requires a pre-arranged plan and participation in furtherance of such plan. The prosecution does not attribute any specific overt act to the Applicant which could demonstrate that he acted in furtherance of a shared criminal intention.
40. It is further submitted that Sections 34 and 120-B IPC are derivative in nature and cannot survive independently. When the substantive offences themselves are not made out, the allegations of common intention or conspiracy automatically fail. Accordingly, the invocation of Sections 34

and 120-B IPC is ex facie groundless and unsustainable, and the Applicant is entitled to be discharged from the said allegations as well.

41. That similarly, Section 114 IPC contemplates abetment by presence, namely that the accused must have abetted the commission of an offence and must be present at the time when the offence is committed. The foundational requirement is the existence of a principal offence coupled with a prior act of abetment. In the instant case, the complaint, FIR and chargesheet do not plead any act of instigation, intentional aiding or conspiracy attributable to the present Applicant, nor do they disclose how the Applicant is alleged to have abetted the commission of any offence while being present at the time of its commission. Accordingly, the charge under Section 114 IPC is also wholly misconceived and unsustainable.

THAT THERE CAN BE NO VICARIOUS LIABILITY UNDER IPC

42. It is submitted that the entire set of allegations contained in the chargesheet pertains to the acts and transactions of Home Trade Limited (HTL), the company through which the dealings with the Bank were undertaken.

43. The prosecution has not alleged that the said funds were paid to or retained by the Applicant in his personal capacity. On the contrary, all payments were made to HTL's official accounts, and all documents emanated from or were executed on behalf of the company. The company, being a distinct legal entity, is alone answerable for its acts done in the ordinary course of business.

44. Though the company itself has not been arrayed as an accused, the prosecution seeks to fix criminal liability solely upon the Applicant, merely by virtue of his position as one of its Directors. Such prosecution

is impermissible in law and contrary to settled principles governing corporate criminal liability.

45. The Indian Penal Code does not create or recognise the concept of vicarious criminal liability except where specifically provided by statute. In absence of a statutory mandate, a director cannot be held criminally liable for acts allegedly committed by the company unless there is evidence of his personal role and mens rea.

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

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

48. In *Delhi Race Club Ltd. v. State of U.P. (2024) 10 SCC 690*, it was observed:

“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.”

49. In the present case, even assuming the prosecution's allegations to be true, the entire transaction forming the basis of the chargesheet pertains to Home Trade Limited, a registered company, which acted as a contracting party in its own corporate capacity. The allegations of issuance of

contract notes, receipt of funds, or non-delivery of securities, all relate to acts of the company in the course of its business.

50. The prosecution has chosen to charge only Directors, including the present Applicant, without attributing any specific role or act done by them individually. The chargesheet contains no material showing any meeting, communication, or act of inducement by the Applicant. The allegations, even if taken at their face value, are not against the Applicant in his personal capacity. In such circumstances, the continuation of proceedings against the Applicant amounts to penalising corporate office per se, which is impermissible under criminal law.
51. It is thus finally submitted that even if the entire material relied upon by the prosecution is taken at its face value, no offence under Sections 465, 467, 468, 471, 420, 114 and 120-B read with Section 34 of IPC is disclosed against the Applicant. The allegations, when analysed in light of the statutory ingredients and judicial principles discussed hereinabove, do not satisfy the basic elements of any of the charged offences.
52. The chargesheet discloses at best a series of commercial transactions between the Complainant Bank and HTL, undertaken in the ordinary course of business. There is no allegation or material showing that the Applicant, in his personal capacity, either conceived, directed, or participated in any unlawful act.
53. The law is settled that a criminal prosecution cannot be founded on conjecture, suspicion, or mere association, and that the Ld. Magistrate must discharge the accused if the charge is “groundless.” The cumulative effect of the above submitted grounds shows that no material exists that could lead to a reasonable suspicion that the Applicant has committed any offence. The charge, therefore, is “groundless” within the meaning of

Section 239 CrPC. Continuing the proceedings would result in a misuse of the process of law and cause grave prejudice to the accused.

54. It is humbly submitted that the Applicant reserves his right and craves leave of this Ld. Court to adopt further grounds, advance additional submissions, and amend, modify the present submissions at the time of hearing of the present discharge application, if so required, for proper adjudication of the matter and to assist this Hon'ble Court in appreciating the factual matrix and legal propositions involved.

55. Thus, it is most humbly and respectfully prayed that the Applicant/Accused may be discharged from the present case from all the offences against him.

Mumbai

Dated: /05/2026

C.F. Accused No. 1