IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3971 OF 2019

1. Omprakash s/o Bhupalsinh @ Pawan Rajenimbalkar

2. Anandidevi wd/o Bhupalsinh @ Pawan Rajenimbalkar

3. Ramakant s/o Shrirangrao Tekale

4. Satishkumar s/o Banshilal Somani

5. Rajesaheb s/o Givnidrao Patil

6. Shivaji s/o Mahadeo Magar

7. Balasaheb s/o Pralhadrao Makode

8. Appasaheb s/o Venkatrao Patil

9. Chandraprakash s/o Kurshnath Jamale

10. Dwarkanath s/o Parasram Mali

11. Udhav s/o Digambar Madake

12. Udhav s/o Manikrao Samudre

13. Shatrughna s/o Dattoba Jaybhay

14. Gundu s/o Bapu Pawar .. Applicants

Versus

The State of Maharashtra & another .. Respondents

Mr. M. S. Deshmukh, Advocate holding for Mr. S. A. Wakure, Advocate for the Applicants.
Mr. S. B. Narwade, APP for the State.

WITH
CRIMINAL APPLICATION NO. 334 OF 2020 IN
CRIMINAL APPLICATION NO. 3971 OF 2019

Vandana wd/o Dilip Dhawale
& another .. Applicants

Versus

Omprakash s/o Bhupalsinh @ Pawan
Rajenimbalkar & others .. Respondents

Mr. V. D. Salunke, Advocate holding for Mr. N. V. Gaware, Advocate for the Applicants.
Mr. M. S. Deshmukh, Advocate holding for Mr. S. A. Wakure, Advocate for the Respondents.

WITH
CRIMINAL APPLICATION NO. 765 OF 2023

1. Ramling s/o Dhondippa Karajkhede

2. Bhima s/o Bhagwanrao Thamane

3. Elahi s/o Farid Bagwan

4. Ganesh s/o Datta Bandgar

5. Pradip s/o Kondiba Munde

6. Laxman s/o Bhimashankar Nalawade

7. Kamalakar s/o Baburao Aakoskar .. Applicants

Versus

The State of Maharashtra & another .. Respondents

Mr. A. T. Jagtap, Advocate for Applicants.
Mr. S. B. Narwade, APP for the State.

WITH
CRIMINAL APPLICATION NO. 848 OF 2023

1. Vikram Shamrao Padwal

2. Sanjay Prakash Nimbalkar

3. Bhimrao Dattu Salunke .. Applicants

Versus

The State of Maharashtra & others .. Respondents

Mr. M. R. Deshmukh, Advocate for Applicants.
Mr. S. B. Narwade, APP for the State.
Mr. V. D. Salunke, Advocate holding for Mr. R. V. Naiknavare, Advocate for Respondent No. 3.

CORAM : R. M. JOSHI, J.
RESERVED ON : 7th SEPTEMBER, 2026
PRONOUNCED ON : 16th SEPTEMBER, 2026

ORDER :

1. Since these applications are arising out of a single First Information Report and as the facts involved in these proceedings are same, by consent of both sides, all applications are heard and decided together by this common order.

2. The present Application Nos. 3971/2019, 765/2023 and 848/2023 are seeking quashment of First Information Report No. 0247/2019 dated 15.09.2019 registered with Dhoki Police Station, Dist. Osmanabad, for the offences punishable under Sections 306,

406, 409, 420, 120B read with Section 34 of Indian Penal Code, 1860 (for short 'IPC') so also for quashment of charge-sheet No. 71/2021 dated 05.07.2021 and to set aside order dated 01.09.2021 taking cognizance to the effect of issuance of process against the Applicants.

3. It is brought to notice of this Court that Applicant Nos. 5 and 6 in Criminal Application No. 3971/2019, during the pendency of this Application, have died, therefore, proceedings stood abated qua Applicant Nos. 5 and 6 in this Application.

4. Facts which led to filing of these applications are narrated in short as under :-

It is the case of the prosecution that Dilip Shankar Dhavale, a mukakdam (contractor) engaged by Terna Shahakari Sakhar Karkhana Ltd., Dhoki, (for short 'Factory') died by suicide on 12.04.2019 by hanging himself at his agricultural field. Accidental Death No. 18/2019 was first registered under Section 174 of Code of Criminal Procedure. Two hand-written chits and two diaries recovered from the spot alleged that in 2010-2011 the Factory had obtained a loan from Vasantdada Nagari Sahakari Bank Ltd., Osmanabad (for short 'Bank') and that as security a charge was created over four acres of the deceased's agricultural land. The loan

was allegedly not repaid by the Factory as resolved, resulting in the Bank auctioning the deceased's land on three occasions. It was further alleged that Rs. 2,93,500/- due to the deceased from Jai Laxmi Sugar Factory, Nitali whose Chairman, Mr. Vijay Dandniak, was also Chairman of the Bank, was neither paid to him nor adjusted against the loan. After the hand-writing expert confirmed the chits to be hand written by the deceased, First Information Report No. 247/2019 was registered on 15.09.2019 at Dhoki Police Station by P.I. Bhimrao Ganpati Wevhal, under Sections 306, 406, 409, 420, 120-B r/w 34 of IPC, naming Omprakash Rajenimbalkar, his mother Anandidevi Rajenimbalkar, then Chairperson of the Factory, the then Vice-Chairperson Ramakat Shrirang Tekale, then Executive Director Shahuraje Dhabekar, then administrative officer Sheshrao Chalak and office-bearers/directors of the Factory, Bank and Jai Laxmi Sugar Factory. Charge-sheet No. 71/2021 came to be filed on completion of investigation against 45 accused persons before the Additional Chief Judicial Magistrate, Osmanabad in R.C.C. No.452/2021 and the case was committed to the Court of Session and is pending as Sessions Case No. 85/2022 before the Additional Sessions Judge, Osmanabad. Process is issued vide order dated 01.09.2021.

5. Learned Counsel for the Applicants in Criminal Application No. 3971/2019 submitted that the Applicants are falsely implicated in the present case and the First Information Report, if taken at its face value, reveals no offence as alleged against the Applicants. He further contended that the statements of the witnesses do not connect the Applicants with the alleged crime. Thereafter, he submitted that the allegations are influenced and instigated by the rivals of Applicant No. 1. He submitted that the dispute is going on between deceased and Bank since 2012-2013 and in the intervening period, not any single allegation was made by the deceased against the present Applicants. He submitted that the deceased committed suicide on 12.04.2019 after which Accidental Death was registered on same day, however, First Information Report was lodged on 15.09.2019. Based on this point, he stressed on the fact that since Applicant no. 1 was contesting election at the relevant time, Applicant No. 1 as well as the other Applicants for the reason being politically associated with Applicant No. 1, are deliberately arrayed as accused in the alleged crime due to political rivalry.

6. He further submitted that as far as Applicant No. 1 is concerned, he is neither signatory to the resolution or any transaction between the deceased and the Bank nor was he Director

or any office bearer of the said Factory at any point in time and so far as the other Applicants are concerned, they are the office bearers of the sugar factory, however, this fact does not make them responsible for the commission of alleged offence. He pointed out the Writ Petitions filed before this Court wherein the deceased stated he had no grievance against the present Applicants prior to the commission of suicide so also the present Applicants are nowhere concerned with the due amount as alleged in the First Information Report. Lastly, he submitted that since there is no *mens rea* or any entrustment the ingredients of Sections 406 and 409 of IPC are not fulfilled and present Applicants are deliberately roped into the crime. In respect of other Applicants, it is his contention that there is no case made out against them of abetment to suicide by deceased nor it could be said that passing resolutions would amount to offence of cheating or breach of trust etc.

7. To support the above comprehensive contention, learned Counsel for the Applicants in Criminal Application No. 3971/2019 places reliance on the judgment of the Hon'ble Supreme Court in case of Sanju Alias Sanjay Singh Sengar vs. State of M.P. **(2002) 5 SCC 371** and State of West Bengal vs. Indrajit Kundu and others, **(2019) 10 SCC 188**.

8. Learned Counsel for Applicants in Criminal Application No. 765/2023 submitted that in the present case, there are no specific overt acts attributed to the present Applicants in the suicide note as well as in the First Information Report, since the names of the Applicants are not listed in the First Information Report as accused persons so also there is no prima facie evidence against the accused to hold them responsible for death of the deceased. He submits that the transactions between the deceased person and the bank are legal since recovery of loan cannot be treated as an illegal act. Therefore, no offence is attracted against the Applicants. He stressed on the fact that the present case between the bank/Applicants and the deceased is of civil nature and offences alleged in the First Information Report are not attracted as far as the role of Applicants is concerned. It is also canvassed that the Bank has no concern with the agreement between contractors and factory.

9. The learned Counsel for the Applicants in Criminal Application No. 848/2023 submitted that this is a case of deliberate implication of the Applicants on account of them being the directors of the factory at relevant time though they were not present while the resolutions dated 04.07.2010 and 13.07.2010, on the basis of which all the accused persons are arrayed, were passed. Moreover, they

opposed the resolution dated 16.11.2010. It is further argued that offence alleged cannot be made attributable to the present Applicants since there are no specific allegations of instigating or compelling the deceased to commit suicide. By drawing attention of the Court to charge-sheet on record, it is argued that nowhere in the suicide note or diary of deceased, the present Applicants are named and in absence of any proximity/live link so also in absence of any role played in alleged transactions, the present Application deserves to be allowed. He further contends that offence under Sections 406 and 420 of IPC cannot be attracted as there was no entrustment of any property nor can it be said that there was any conspiracy between present Applicants and Omraje Nimbalkar as they were political rivals. Only by the reason that present Applicants were Directors of the factory during the relevant period cannot be held liable for the offence alleged and made to undergo the ordeals of trial. To support his contentions learned Counsel for the applicants relied upon the judgment of Hon'ble Supreme Court in cases of S. S. Chheena Vs. Vijaykumar Mahajan, **2010 All M.R. Criminal 3298** and State of Haryana and others Vs. Ch. Bhajan Lal and others, **1992 Cri.L.J.527**.

10. Learned APP opposed all the Applications and submitted that all of the Applicants have acted in collusion to commit the crime leading to suicide of the deceased. He submits that since the offence is of serious nature, no relief may be granted to the Applicants. He drew attention of the Court to the resolutions dated 04.07.2010 and 13.07.2010 so also the undertaking/guarantee dated 01.08.2010 holding the factory liable for the expenses incurred by the contractors while raising the loan so also assurance given by the factory that in the event of non-deduction of loan amount from the payable amount of the contractors, the Factory will pay the entire loan amount including the interest.

11. To oppose grant of any relief to all the Applicants, learned APP places reliance on judgments of the Hon'ble Supreme Court in case of Mahendra K.C. vs. State of karnataka and another **(2022) 9 SCC 129**, Rajeev Kourav vs. Baisaheb and others, **(2020) 3 SCC 317** and Chitresh Kumar Chopra vs. State (Government of NCT of Delhi), **(2009) 16 SCC 605**.

12. Learned Counsel appearing for the intervenor in Criminal Application No. 3971/2019 vehemently opposed grant of any relief to the Applicants. He stressed on the fact that the Applicants in

collusion have committed the fraud with the deceased and other contractors in the factory leading to this unfortunate event. He submitted that all the ingredients of offence under Sections 406, 409, 420 of IPC are fulfilled eventually culminating the offence under Section 306 of IPC. To support his submissions, he placed reliance on judgment of Hon'ble Supreme Court in case of Ude Singh and others vs. State of Haryana, **2019 (17) SCC 301**.

13. In Criminal Application no. 3971/2019, Applicant No. 1 claims that he was not the office bearer of the Factory. Rest of the Applicants in the said application are the Directors and office bearers of the said Factory. Some of them are the signatories to the resolutions in question and some are not.

14. In Criminal Application No. 848/2023, the Applicants are said to be the Directors of Factory during the relevant period i.e. 2008 – 2010 and were party to the resolutions in question. Though they claim to be not present in the said meeting, this becomes their defence and disputed fact which could only be decided during trial.

15. Applicants in Criminal Application No. 765/2023 are the Directors and persons concerned with the Bank.

16. Though different roles are attributed to the Applicants in all these applications, there is a common thread therein insofar as the offence punishable under Section 306 of IPC is concerned, since all accused are attributed offence of abetment to suicide committed by the deceased.

17. The First Information Report came to be lodged solely on the ground that the deceased while ending his life left behind a chit that on account of the resolutions passed by the factory of seeking loan from Bank, has agreed for repayment of the loans taken in the name of the contractors. However, the loans were not repaid and as the land belonging to the deceased was put to auction, he felt embarrassed. Similarly, there is allegation in the suicide note as well as other writings left behind by the deceased to the effect that Applicant No. 1 in Criminal Application No. 3971/2019 in the capacity of MLA has assured repayment of loan but did not do so.

18. In order to appreciate the said allegation, insofar as accused persons abetting the act of commission of suicide by the deceased is concerned, it would be relevant to take note of provisions of Sections 306 and 107 of IPC which read as under :-

306. Abetment of suicide – If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

107. Abetment of a thing – A person abets the doing of a thing, who-

First – Instigates any person to do that thing; or

Secondly – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1 – A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2 – Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

The above provisions require the prosecution to establish that the accused instigated any person to commit suicide or intentionally aided him to do so, either independently or in conspiracy with any other person. Thus, what is relevant for the purpose of attracting this penal provision is the intention of the accused person to abet the act of commission of suicide by the deceased. What is relevant is the *mens rea* of the accused and not what was perceived or understood by the victim. Apart from this, it is also absolutely necessary to establish a nexus in terms of the act/action of the accused, as well as the proximity of time between the act of the accused and the commission of suicide by the victim. For the purpose of deciding the applicability or otherwise of the said offence, these aspects are required to be borne in mind by the Court. On this point reference can be made to the judgment of Hon'ble Supreme Court in case of ***Amalendu Pal v. State of W.B.,*** **(2010) 1 SCC 707,** wherein while discussing the essential elements to constitute the offence under section 306 of IPC, the Court observed thus:

> ***"13.*** *In order to bring a case within the purview of Section 306 IPC there* ***must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide****. Therefore, the act of abetment by the person charged*

with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

(emphasis supplied)

Therefore, it becomes an absolute necessity for prosecution to establish the above mentioned essentials of the abetment so as to prove the offence under Section 306 of the IPC.

19. Here in this case, undeniably record indicates that the resolutions in question were passed in the year 2010. Pursuant to the said resolutions, loan came to be disbursed in the name of the deceased as well as other contractors. There is sufficient material on record to indicate at this stage that the factory has undertaken for repayment of the said loan. Further material shows that though no dues certificate was issued by the factory, infact the loan obtained from the bank was not paid. Even if all these facts are accepted to be true, this situation relates back to the year 2014. Writ Petition filed by the deceased himself in the year 2015 confirms the said fact. Perusal of the Writ Petition and the pleadings of the deceased also do not indicate that the said arrangement was forcible. The question would arise now as to whether in respect of such arrangement which came into existence as back as in the year 2010, could become a

ground to attribute offence of abetment to commit suicide by the deceased against the present Applicants.

20. Apart from the fact that the deceased had grievance in respect of the said arrangement made by the Factory being not complied with, there is also allegation with regard to he being felt embarrassed by his landed property being put to auction by the Bank. In this regard, material collected during the course of investigation indicates that the property was put to auction for the first time on 11.11.2014 and thereafter twice on 02.01.2016 and 05.03.2016. There is one notice of 01.11.2018 indicating the proposal of such auction however, there is nothing on record to indicate that any attempt to auction the property was done thereafter. In the light of these facts, the unfortunate suicide has been committed by the deceased on 12.04.2019. It would be relevant to refer to the judgment of Hon'ble Supreme Court which dealt with the issue with regard to the proximity between the act of commission of suicide and the act on the part of the accused persons in the case of Mohit Singhal vs. State of Uttarakhand, **(2024) 1 SCC 417**, wherein it is observed thus:

> *"11. In the present case, taking the complaint of the third respondent and the contents of the suicide note as*

correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in close proximity to the date of suicide. By no stretch of imagination, the alleged acts of the appellants can amount to instigation to commit suicide. The deceased has blamed the third respondent for landing in trouble due to her bad habits."

Similarly, in case of Amalendu Pal vs. State of West Bengal, **(2010) 1 SCC 707**, it is observed thus :-

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action

proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable."

21. Here in this case, it cannot be said that there is proximity between the action of commission of suicide by the deceased and acts of passing of resolutions, making deceased as well as other contractors to obtain loan, non-repayment of loan as well as putting the property in auction. The evidence collected during the course of investigation and confirmed by the charge-sheet leads to the conclusion that there is no nexus between the suicide committed by the deceased and the other actions on the part of the Applicant/accused. This Court, therefore, has no hesitation to hold that offence punishable under Section 306 of the IPC would not get attracted against any of the Applicants.

22. As far as appearance of name of Applicant in No. 1 in Criminal Application No. 3971/2019 in the suicide note of deceased is concerned, it would be relevant to take note of judgment of Hon'ble Supreme Court in case of Patel Joshnaben Pravinkukmar Patel and others vs. State of Gujrat and another, **2026 LiveLaw (SC) 835**, wherein it has been observed thus :-

"22. In our view, lodging an FIR, even if it is false, against a person, per se, does not amount to instigating that person to commit suicide. Besides, here the FIR was lodged by the deceased's wife who had suffered injuries. Otherwise also, every individual has a right to take recourse to appropriate proceedings under law to protect his or her rights. Therefore, if a person sets the criminal justice delivery system in motion, he cannot be held liable for abetment to commit suicide, if the person against whom proceedings were initiated commits suicide.

24. While assessing whether a prima facie case of abetment to commit suicide is made out or not, the court must not merely consider the allegations in the suicide note but also the surrounding facts of the case. Merely because a dejected husband, or lover, out of frustration, ends his life and puts the blame on the accused, in his suicide note, is not enough to conclude that a prima facie case is made out against those who are blamed. The court would have to consider whether the conduct of the accused complained of in ordinary circumstances would have driven an ordinary person, not an over sensitive person, to take that drastic step to end his life.

. Though the above judgment is passed in the facts of matrimonial disputes, the ratio laid therein would apply to the instant case. Needless to say that the deceased had grievance against the persons named in the suicide note as well as writings left behind

and hence mere naming them therein would not be sufficient to accept involvement of applicants in the crime, in absence of any other supporting material to hold so. The only inevitable conclusion which would be drawn therein is that the applicants cannot be made to undergo criminal trial in respect of offence punishable under Section 306 of the IPC.

23. Insofar as allegation in respect of offences punishable under Sections 406, 409, 420 and 120B of IPC is concerned, it would be relevant to take note of the provisions of Sections 406, 409 and 420 which read thus :-

> **406. Punishment for criminal breach of trust –** Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
>
> **409. Criminal breach of trust by public servant, or by banker, merchant or agent –** Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either

description for a term which may extend to ten years, and shall also be liable to fine.

420. Cheating and dishonestly inducing delivery of property – Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

In order to constitute offence u/s 406 and 409 of IPC, the prosecution must show that there is criminal breach of trust done by the Applicants by showing that they were entrusted with property, which was later dishonestly misappropriated or converted to their own use or dishonestly used or disposed of, in violation of any direction of law or legal contract made in regard to discharge of such trust. Moreover, to constitute offence under Section 420 of IPC, it is significant for the prosecution to establish that the Applicants deceived the deceased and fraudulently or dishonestly induced him to deliver the property to the Bank or to consent for retainment of such property or that they have intentionally induced him to do or

omit to do anything which he would not do or omit if he was not so deceived thereby causing damage or harm to the deceased.

24. Coming to the plea sought to be raised by Applicant No. 1 in Criminal Application No. 3971/2019, though there are statements of witnesses indicating that Applicant No. 1 in Criminal Application No. 3971/2019 was present in the meetings of the factory, more particularly, when the resolutions in question were passed on 04.07.2010 and 13.07.2010, documentary evidence collected during the course of investigation does not indicate presence of this Applicant in the said meetings. Needless to say that in order to attract provisions of Sections 406, 409 and 420, there has to be involvement of this Applicant in the capacity of the Director of the Factory, since there could be no agreement/contract between the said applicant and deceased/contractors in the personal capacity. If it is not so there is no question of meeting the requisite conditions to constitute this offence, Thus, in his individual capacity, no offence could be made attributable against him.

25. The writings of the deceased indicate that this Applicant No. 1 in Criminal Application No. 3971/2019 has assured repayment of loan obtained in the name of the contractors, even if such assurance

is accepted to be true, question arises before this Court as to whether it would be sufficient to attract provisions of Sections 406, 409 and 420 of IPC. The statement of witness also indicates that though in the year 2014 this Applicant had assured the witness of repayment of loan, offence under Sections 406, 409 and 420 of IPC would not get attracted against this Applicant. For the purpose of seeking involvement of this Applicant in this crime, it was absolutely essential for the prosecution to collect evidence during the course of investigation indicating fulfilment of requisite conditions for application of these offences, which is absent in the present case. This Court, therefore, has no hesitation to hold that even in respect of the offence under Sections 406, 409 and 420 of the IPC, involvement of Applicant No. 1 in Criminal Application No. 3971/2019 cannot be accepted.

26. Entrustment for breach of trust and dishonest inducement for cheating are one of the essential ingredients however, they are conceptually distinct. Where property is delivered because of an existing relationship of trust, the case may involve criminal breach of trust and where property is delivered because the accused deceived and induced the complainant, the case may involve cheating. Here in this case, the question of breach of trust might not arise since there

is no misappropriation of property by the entrusted entity i.e. bank, however as far as the dishonest intention inducing the contractors for obtainment of loan is concerned, it seems possible in this case by assuring the repayment by the Factory through passage of resolutions in question and signing the undertaking/ assurance to repay the loan in case of non-deduction of payable amount towards loan from the accounts of contractor. However, whether the offence is made out and which offence is made out is a matter of trial. *Prima facie* factual allegations disclose the ingredients of the offence alleged.

27. As far as Directors / office bearers of sugar factory are concerned, there is evidence to indicate that resolutions were passed in the meetings of factory showing that the loan was to be obtained in the name of the contractors and repayment of the loan was to be done by the factory. There is thus reason to believe that on the assurance in this manner, deceased as well as other contractors agreed to obtain loan. The charge-sheet indicates that after obtainment of loan, no dues certificates were issued by the factory to the contractors however, in fact the amounts towards loan obtained from the bank were not repaid. Thus, there is reason to believe that since inception the Directors and office bearers of the factory had no intention to fulfill the commitment given to the

contractors which is clearly reflected in the resolutions passed by them. Thus, there is reason to believe that the offence under Section 420 of IPC gets attracted against the Directors / office bearers, who were the party to the resolutions in question.

28. Documentary evidence on record collected during the course of investigation indicates that Applicant Nos. 2, 3, 4, 8, 11, 12 and 13 in Criminal Application No. 3971/2023 and all the Applicants in Criminal Application No. 848/2023 are party to the resolutions. At this stage, therefore, there is evidence to indicate their involvement in the crime. As such, by applying the principles laid down by the Hon'ble Apex Court in case of State of Hariyana Vs. Bhajan Lal, **1992 (Supp) (1) SCC 335**, extraordinary powers under Section 482 of the Code of Criminal Procedure cannot be exercised qua these Applicants. As far as Applicant Nos. 7, 9, 10 and 14 in Criminal Application No. 3971/2023 are concerned, since they were not party to the resolutions in question, question of attributing any offence against them does not arise.

29. Insofar as officers of the Bank are concerned, irrespective of the fact as to what was the understanding between this bank and the office bearers of the factory, it was always open for the bank to adopt

appropriate remedy as per law for the purpose of recovery of the amounts advanced to the contractors. As such, all the Applicants in Criminal Application No. 765/2023 cannot be considered to have committed the offence in question. Perusal of evidence collected during the course of investigation though indicates involvement of some of the office bearers/Directors of the Bank, however there is no such evidence qua these Applicants. Hence, the following order:

ORDER

(I) Applications bearing No. Criminal Application No. 3971 of 2019, Criminal Application No. 765 Of 2023 and Criminal Application No. 848 Of 2023 stand allowed to the extent of offence punishable under Section 306 of the IPC qua all applicants.

(II) Criminal Application No. 3971/2026 stands partly allowed qua applicant Nos. (1) Omprakash s/o Bhupalsinh @ Pawan Rajenimbalkar, (7) Balasaheb s/o Pralhadrao Makode, (9) Chandraprakash s/o Kurshnath Jamale, (10) Dwarkanath s/o Parasram Mali and (14) Gundu s/o Bapu Pawar in terms of prayer clauses '**A-1**', '**AA**' and '**B**' and stands rejected qua applicant Nos.2, 3, 4, 8, 11, 12 and 13, in respect of offences punishable under Sections 406, 409 and 420 of IPC.

(III) Criminal Application No. 765/2023 stands allowed qua applicant Nos.1 to 7 in terms of prayer clauses '**B**' and '**B-1**'.

(IV) Criminal Application No. 848/2023 stands rejected in respect of offences punishable under Sections 406, 409 and 420 of IPC.

(V) Pending application, if any, stands disposed of.

(R. M. JOSHI, J.)

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