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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 245 OF 2025

Sunil Mishra and Ors.

.. Petitioners

Versus

The State of Maharashtra and Anr.

.. Respondents

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- Mr. Prithish Sabharwal i/b Ms. Keral Mehta, Advocates for Petitioners.
 - Mr. Sachin Thorat a/w Mr. Dhananjay Bhosale, for Respondent No. 2.
 - Ms. Sangeeta E. Phal, APP for State.

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 18, 2026.

P.C.:

1. Heard Mr. Sabharwal, learned Advocate for Petitioners, Mr. Thorat, learned Advocate for Respondent No.2 and Ms. Phad, learned APP for State.

2. Criminal Writ Petition No. 245 of 2025 is filed under Article 226 of the Constitution of India read with Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 for quashing and setting aside FIR Cr. No. 367 of 2023 under Section 406, 409, 420, 120B r/w 34 of Indian Penal Code, 1860 registered at Dattawadi Police Station, Pune. The complaint has been filed on behalf of Tunwal e-Motors Private Limited by its Manager. The company has its registered office in Pune and is in the business of manufacturing, assembling and selling of electronic

two-wheeler vehicles. Brief facts relevant for adjudication of present Writ Petition are as follows.

3. Petitioners are Directors in the company called R.K. Container Line Private Limited (for short “**RKCL**”). RKCL provides containers and transportation service for goods/shipments from the port of lading. RKCL and Tunwal e-Motors Private Limited admittedly have a business relationship since July 2021. RKCL used to pay rent and other local charges for the goods/shipments of Tunwal e-Motors Private Limited and same regular invoices and through the Custom House Clearing Agent would collect the shipment arriving at Navha-Sheva port in Mumbai in its containers and deliver it to its destinations.

3.1. The fact that from July 2021 until filing of the present complaint in Dattawadi Police Station, Pune on 05.12.2023, the relationship between the above parties subsisted is not denied and stands admitted from the overwhelming documentary evidence placed on record. The relationship is such that substantial amounts are paid by the Complainant company collectively to RKCL which are adjusted and applied towards liquidating the invoices raised for the purpose of claiming and transportation of goods belonging to Complainant.

3.2. Dispute arose when there was a delay in delivery of 12 containers containing goods as alleged during the above period. On

17.01.2022, goods of Complainant company arrived at Navha-Sheva port. They were covered by 3 invoices and disbursed in 12 containers. According to Complainant it had paid Rs.47,09,474/- towards transport charges, shipping line charges and CFS charges through its bank accounts to RKCL but still there was delay in delivering the containers notwithstanding the business relationship between the 2 companies which led to detention of the goods. Dispute has arisen due to Complainant company having paid the custom duty of 8 containers to RKCL, but RKCL on having paid it thereafter to secure release of the goods demanded more amount for release/delivery of the containers since it had exhausted its resources.

3.3. Hence, case of Complainant company is that it suffered huge financial loss due to non-delivery of containers despite RKCL receiving payment being the cause of action. Complainant company has filed complaint on 05.12.2023 through its Manager which is numbered as Cr. No. 367 of 2023.

4. Mr. Sabharwal, Learned Advocate appearing for Petitioners who are 3 directors of RKCL would make the following submissions for seeking quashing of the complaint report registered as Cr. No. 367 of 2023 on 05.12.2023. He would submit that no cause of action rather any delay is attributed to RKCL or for that matter to its Directors in the present case. He would submit that RKCL's obligation is to raise the

invoice on intimation then receive the shipment and effect deliveries from the designated port. He would submit that once the shipment arrives at the designated port the carrier company namely RKCL is duty bound to receive the TELEX Bill of Lading (for short “BoL”) from the supplier (foreign company) for effecting release of the goods on behalf of the importer (in this case the Complainant company).

4.1. He would submit that purpose of issuing the TELEX BoL is to acknowledge and secure payment due to the supplier from the buyer. He would submit that though RKCL issued 3 invoices on the 03.12.2021 and 17.01.2022 in the case of imports by Complainant after arrival of the shipments at the Indian port, they were kept on hold as it had not received TELEX BoL from the supplier company to give the No Objection Certificate for effecting release of the goods. He would submit that documentary evidence *prima facie* shows that the 3 shipments were kept on hold at the port for nearly 71 day, 99 days and 50 days respectively after its arrival at the port due to the above reason which is not attributable to RKCL.

4.2. Hence, he would argue that failure of the private Complainant company to discharge its duty towards the supplier company for issuing TELEX BoL for release of its shipment cannot be attributed to RKCL. He would submit that there were as many as 8 invoices which were overdue from the private Complainant company

to the tune of Rs.1,34,00,000/- from time to time and these are placed on record. He would submit that on 01.02.2022 the private Complainant company cleared lumpsum dues of Rs.1,30,00,000/- of RKCL which was adjusted and applied to invoices cleared. He would submit that view of this, the figure mentioned in the FIR for outstanding debts was never Rs.1,06,00,000/- as it is contrary to the invoices issued as per RKCL's ledger account maintained in its books *qua* the Complainant company.

4.3. He would submit that because of healthy business relations with the Complainant company, RKCL on its own volition made advanced payment of fresh charges to the shipping agency of Rs.71,54,000/-. He would submit that even thereafter, when the goods under the 3 invoices arrived, in view of non production of TELEX BoL the goods remained in the port in storage leading to escalation of detention charges. He would submit that on giving repeated reminders, Complainant company then effected further lumpsum payment of Rs.1,44,00,000/- to RKCL towards its outstanding liability *qua* many other invoices. It is in this context that the shipment received on 29.01.2022 remained detained for want of TELEX BoL from 26.11.2021 to 06.02.2022.

4.4. He would submit that these charges accumulated to Rs.43,36,000/- which is attributable to the Complainant company and

it was therefore adjusted from the payments made by the Complainant company. He would submit that even after such adjustment the Complainant company was still in debt and was required to pay an amount of Rs.96,37,000/- towards outstanding invoices.

4.5. Hence, he would submit that consequentially due to delay of 71 days ,99 days and 59 days in receiving the TELEX BoL dated 17.02.2022 (1 bill) and 17.03.2022 (2 bills), the detention charges of the shipment detained rose to Rs.1,87,00,000/-. He would submit that Complainant company was in financial distress which is *prima facie* evident from the correspondence placed on the record. He would submit that record shows that 30% waiver of detention charges was agreed by the vessel company at the request made by RKCL on behalf of the Complainant company.

4.6. In the aforesaid background, he would vehemently argue and submit that Complainant company filed Commercial Civil Suit in the Delhi High Court seeking damages for losses of approximately Rs.8,54,00,000/- and issued per-institutional mediation notice dated 15.02.2023 to RKCL. Copy of that notice is appended at page No. 149. He would submit that pre-litigation mediation failed. He would submit that by this very action of filing the Commercial Suit, the private Complainant company accepted that the *lis* between the parties was a commercial dispute and not a criminal offence. Copy of the suit plaint

is appended to the Petition. He would draw my attention to the mediation application filed by the private Complainant company, wherein it has described the dispute between parties as a commercial dispute and has quantified its claim at Rs.8,24,00,000/-. He would submit that the *lis* between the parties is on the basis of assertions made by the Plaintiff i.e. private Complainant company and denial of the same by the defendant RKCL.

4.7. On the basis of above submissions Mr. Sabharwal has emphatically argued that if the entire documentary evidence appended to the Petition is seen, the dispute is that of a purely civil and commercial nature on the basis of the ledger and books of accounts maintained by RKCL. He would submit that the issue of unpaid detention charges due to delayed receipt of TELEX BOL cannot be therefore attributed to RKCL. Therefore he would submit that, there is no question of any dishonest intention whatsoever in the present case.

4.8. Hence, he would submit that this is a fit case for quashing of the FIR which is nothing but a pressure tactic adopted by the private Complainant company and if the FIR is seen it doesn't constitute any offence of cheating and for that matter offence of breach of trust *qua* Petitioners who are Directors of RKCL u/s 406, 409, 420 of the Indian Penal Code, 1860. He would therefore urge the court to allow the Petition in terms of prayer clause (b) and quash and set aside the FIR

and RCC No. 2578 of 2025 as prayed for.

5. *PER CONTRA*, Mr. Thorat, learned Advocate appearing for Respondent No.2 - the private Complainant company would vehemently respond by arguing that notwithstanding substantial advanced payment of over Rs.2,33,58,000/- having been made to RKCL, there still was detention and delay in delivery of the goods under the 3 invoices leading to substantial financial loss. He would submit that it is true that commercial suit was filed by the private Complainant company in the Delhi High Court bearing Suit No. 1 of 2023 for the same cause of action, but in view of the said company later realizing that there was forgery and fabrication of the 3 invoices due to which fraud was played, it filed FIR after 11 months in Dec 2023.

5.1. He would vehemently submit that after filing of FIR statement of the CEO of RKCL was recorded in April 2024. Copy of this statement is appended at page No. 573 and according to him this statement showed that some mischief was played by RKCL in raising the 3 contentious invoices of payment for outstanding dues. Next, he would draw my attention to page No. 809 of the Petition where the statement of Ms. Poonam Sagar, the Manager of RKCL is recorded and placed wherein she states that she had prepared the 3 contentious invoices at the behest and on the instructions given by the applicants

and that she was merely an employee of the company RKCL.

5.2. Finally he would draw my attention to page No. 824 of the Petition wherein letter dated 11.11.2024 addressed by the police inspector investigating offence the is placed and it states that upon investigation the police was of the opinion that the contentious 3 invoices were forged and fabricated which were issued by RKCL.

5.3. On the basis of the above submissions and circumstances and the opinion expressed by the Police Officer he would contend that if the FIR appended at page No. 830 is read it would be evident that the amount of Rs.23,00,000/- was adjusted despite which the detention of goods occurred and the subsequent delay led to severe financial loss for the Complainant.

5.4. Mr. Thorat would submit that the test for quashing is well settled inasmuch as the powers for quashing has to be exercised sparingly and with circumspection. He would submit that Court is not required to conduct meticulous examination of the evidence to determine whether the prosecution case will ultimately result in conviction.

5.5. He would submit that present case is not merely a civil dispute but is in the nature of criminal offence in the course of commercial transaction between the parties and therefore merely commercial character of the transaction cannot be a ground for

quashing. He would vehemently submit that FIR / Complaint is required to be considered as a whole which *prima facie* discloses ingredients of criminal findings. He would submit that there is substantial correspondence between the parties to show that private Complainant had delivered humongous amounts to Petitioner - RKCL which is evident from various communication and correspondence despite which there is failure on the part of RKCL to issue the delivery orders. He would submit that all such material regarding withholding of the delivery orders cannot be disregarded.

5.6. He would submit that the unauthorized adjustment of funds on the part of Petitioner RKCL therefore requires adjudication at trial. He would vehemently submit that at this stage, the Court cannot conclusively determine the adjustment made by Petitioner which was authorized or contractually permissible in law whether *bonafide* or dishonest. He would submit that these questions necessarily depend upon the contractual terms, invoices, payment transactions, ledger accounts, communication between the parties, written statement and surrounding circumstances as also all elements and ingredients of critical breach of trust are therefore matter of evidence.

5.7. He would conclude by stating that the allegations of cheating cannot be dismissed merely because the transaction is commercial in nature and Petitioner cannot indirectly seek acquittal through Section

482 by quashing the complaint on the ground that transactions between the parties were commercial in nature. He would submit that none of the ingredients of quashing as contemplated by the Supreme Court in the case of *State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.*¹ principle established in the present case and the interest of justice therefore requires the trial to proceed in the criminal Court.

5.8. Lastly, he would submit that even if civil remedy exists, it is not exclusively and existence of civil remedy is entirely irrelevant where factual allegations *prima facie* discloses the criminal offence as is in the present case. He would therefore submit that Petition deserves to be dismissed. In support of this submissions he has referred to and relied upon the following decisions:-

- i) *Trisuns Chemical Industry v. Rajesh Agarwal & Anr.*²;
- ii) *Priti Saraf & Anr. v. State (NCT of Delhi) & Anr.*³;
- iii) *K. Jagdish v. Udaya Kumar G.S.*⁴.

6. I have heard the submissions made by both the learned Advocates at length and perused the entire record of the case/Petition which runs into 1193 pages with their able assistance. At the outset, I am not inclined to accept the submissions made by Mr. Thorat for the simple reason that his entire argument of fraud, forgery and fabrication is based upon three incidents of investigation carried out after lodging the FIR over the period of 1 year thereafter and that

1 1992 AIR 604
 2 (1999) 8 SCC 686
 3 (2021) 1 SCC 142
 4 (2020) 14 SCC 552

cannot be countenanced as a ground to sustain the FIR in view of conduct of the private Complainant company.

7. In the first instance if the FIR is seen, it is crystal clear that both parties enjoyed a very healthy business relationship from 2021 onwards. Both parties indulged into crores of rupees of transactions for shipment and transportation of goods imported by the Complainant company. It is seen that the delay occurring due to non receipt of TELEX BoL regarding the 3 contentious invoices and the goods/containers being detained at the port of shipment is the real dispute in the present case. Who is responsible for the same is the question to be answered? According to Complainant company since it was effecting lumpsum payment to RKCL and had a healthy business relationship, it ought to have paid the charges for the shipment and should not have caused the delay and detention charges; whereas according to RKCL, the Complainant was already in debt and regarding the 3 contentious invoices the delay occurred due to non-receipt of TELEX BoL which was the responsibility of the Complainant company to procure.

8. Once that is the position, it is required to be adjudicated on evidence. Therefore, private Complainant company filed Commercial Suit in the Delhi High Court in Jan 2023. It initiated 12A pre-institutional mediation proceedings. Those proceedings failed and the

Commercial Suit is pending. The entire material rather documentary evidence was available at the time of filing of the said Suit. In the Suit plaint there is not a single allegation/ averment of any fraud, forgery or fabrication of the invoices.

9. The issue and *lis* of fraud is raised primarily on the basis of payments effected in advance and whether delay has occurred and who is responsible for the delay? Therefore, filing of the FIR in the aforesaid background in December 2023 is nothing but a sheer abuse of the due process of law and a clear pressure tactic adopted by raising a bogey of forged and fabricated contentious invoices by the Complainant. The complaint is filed u.\s 420 and 406 only. Reading of the FIR appended at page no. 97 *prima facie* shows that the *lis* is between two companies namely Private Complainant company and RKCL Private Limited which is clearly named therein. While arguing Mr. Thorat has also roped in a sister concern company of the Complainant and attempted to argue that the liabilities of both of them are interpolated as RKCL was effectively giving service to both companies. However, in the FIR there is no such case made out or pleaded whatsoever.

10. The entire FIR proceeds is on basis of payments made and received between the parties *qua* several invoices since 2021 and the amounts exchanged between them. The FIR is specific to the 12

containers detained under the 3 invoices which are in dispute due to the delay and detention charges. *Prima facie* there is no element of fraud and fabrication, which is not even alleged in the FIR. Therefore, the Petition deserves to succeed. I am inclined to accept the submissions made by Mr. Sabharwal and reject each and every submission made by Mr. Thorat. Mr Thorat's submissions rather do not inspire any confidence of the Court.

11. Mr. Thorat has placed reliance on the letter dated 11.11.2024 appended at Page No. 824, which is an opinion given by a police officer as a strong circumstance to allege fraud. This opinion relied upon by Complainant cannot be countenanced at all. I am of the opinion that FIR is based on alleged violation of the agreed contractual arrangement between the parties arising out of the invoices raised and payments made and exchanged between them. All ledger accounts and material is placed on record. *Prima facie* FIR does not even make out any case of cheating or criminal breach of trust. It is filed 11 months after the filing of the Commercial Suit and failure of Mediation proceedings only as an after thought to pressurise the Petitioners' company RKCL by giving a criminal color to a purely civil dispute.

12. In view of my aforesaid observations and findings, Petition stands allowed in terms of prayer clause (b) which reads thus:

“(b) This Hon’ble Court be pleased to issue a writ of mandamus of certiorari or any other appropriate,

writ/direction/order in the nature of writ of mandamus or certiorari under Article 226 of the Constitution of India, 1950 and also u/S. 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023, thereby quash and set aside the F.I.R., chargesheet and proceedings bearing R.C.C. No. 2587 of 2025 pending before 8th Joint Civil Judge J.O. and JMFC, Pune arising out of FIR bearing C.R. No. 367 of 2023 dated 05.12.2023 u/s. 406, 409, 420, 120-B r/w 34 of Indian Penal Code, 1860 registered at Dattawadi Police Station, Pune.”

13. Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

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