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

WRIT PETITION NO. 2657 OF 2014

Chintan Pradeep Jhaveri ..Petitioner

v/s.

The State of Maharashtra ..Respondent

Mr. Aabad Ponda for the Petitioner
Dr. F.R. Shaikh, APP for the Respondent/State.

**CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.**
**DATE ON WHICH THE JUDGMENT IS RESERVED : 23RD JANUARY, 2017**
**DATE ON WHICH THE JUDGMENT IS PRONOUNCED: 7TH FEBRUARY, 2017**

**JUDGMENT (PER ANUJA PRABHUDESSAI, J.)**

1. This is a petition under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, 1973 with a prayer for quashing the criminal proceeding No.173 /PW/2014 as against the petitioner for offences punishable under Section 406, 420 r/w. 34 of the Indian Penal Code.

2. Brief facts necessary to decide this petition are as under:

A cricket match between West Indies and India was to be played from 14th November, 2013 till 18th November, 2013 at Wankhede Stadium Mumbai. The said test match was of significance as it was the last test match of Sachin Tendulkar. It is alleged that on 12th November , 2013, the Mumbai police received information that Janak Gandhi and his associates were indulging in black marketeering by selling complimentary passes and tickets of the said match at an exorbitant price. Hence, a trap was laid and Janak Gandhi and his two associates Girish Premanna and Ajay Shankar Jadhav were apprehended while selling complimentary passes and tickets.

3. It is the case of the prosecution that the Mumbai Cricket Association had given five complimentary passes to Pradeep Jhaveri, the father of the petitioner. It is alleged that said Pradeep Jhaveri had given the said complimentary passes to the petitioner, who in turn had sold the said five complimentary passes to Girish Premna for Rs.10,000/- each. It is the case of the prosecution that the said complimentary passes were not meant for sale. Hence, Laxmikant Salunkhe, Assistant Police Inspector, lodged the FIR

against the petitioner and the other co-accused, on the basis of which Cr. No157/ 2013 was registered at Marine Drive Police Station for offences under Section 406, 420 read with 34 of the Indian Penal Code. The investigation was subsequently transferred to the DCB, CID, Crime Branch, Mumbai, whereupon crime number was renumbered as 113/2013. Upon investigation of the said crime, charge-sheet came to be filed against the petitioner and the other co-accused for the offences punishable under Section 406, 420 r/w. 34 of Indian Penal Code, which is registered as Criminal Case No.173/PW/2014.

4. The principal submission of the Learned Counsel Shri Ponda is that the FIR as well as the other material which forms part of the charge sheet, even if were taken as true, do not constitute offence of criminal breach of trust and cheating as defined under sections 405 and 415 IPC. He submits that entrustment of property in any manner or creation of dominion over the property is one of the essential ingredients of the offence of criminal breach of trust. He submits that the allegations against the petitioner are that he had sold the

complimentary passes given to his father by the Mumbai Cricket Association. Mr. Ponda, the Lnd. Counsel for the petitioner submits that there is no allegation of creation of trust or passing of the dominion in respect of the complimentary passes. He further contends that the FIR as well as the other material, which forms part of the charge sheet, does not reveal that the petitioner had deceived any person. He therefore contends that the accusation leveled against the petitioner even if accepted in its entirety as true and correct, do not spell out the essential ingredients of the offence of criminal breach of trust and cheating. Under such circumstances, continuation of these proceedings against the petitioner will be sheer abuse of process of law. Mr. Ponda has relied upon the decision of the Apex court in ***i) Bhaskar lal Sharma & Anr. v. Monica reported in (2009) 10 SCC 604, ii) Central Bureau of Investigation, SPE, SIU (X), New Delhi vs. Duncan Agro Industries Ltd. reported in (1996) 5 SCC 591 and iii) State of Gujrat v. Jaswant Nathalal AIR 1966 SC 700***.

5. Per contra, the Lnd. APP Mr. Shaikh has submitted that the

material on record prima facie indicates that the Mumbai Cricket Association had given five complimentary passes to the father of the petitioner, who was a volunteer of the said Association. The said complimentary passes were not meant for sale. He has submitted that the material on record reveals that the petitioner had sold the said passes to Girish Premna, who in turn had sold the same at an exorbitant rate. The learned APP submits that had cheated the Mumbai Cricket Association by selling the complimentary passes for his own gain. The learned APP submits that the allegations leveled against the petitioner and the material in support thereof prima facie indicates that the petitioner was involved in commission of the alleged offence.

6. At the outset it may be mentioned that in ***Indian Oil Corporation vs. NEPC India Limited, (2006) 6 SCC 736,*** the Apex Court has summarized the principles relating to exercise of jurisdiction under Section 482 of Criminal Procedure Code to quash complaints and criminal proceeding as under:

> *12.The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to*

*quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few- Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, State of Haryana v. Bjanan Lal, Rupan Deol Bahah v. Kanwar Pal Singh Gill, Central Bureau of Investigation v. Duncans Agro Industries Ltd, State of Bihar v. Rajendra Agrawalla, Rajesh Babaj v. State NCT of Delhi, Medchi Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan v. Vijay Singh and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharafu Haque. The principles relevant to our purpose are:*

*(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.*

*For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.*

*(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.*

*(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.*

*(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the*

> *necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.*
>
> *(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.*

7. Considering the aforesaid guidelines, the question which falls for consideration is whether the allegations in the FIR and the other records which form part of the charge sheet, when considered in its entirety as true and correct, constitute offence of Criminal breach of trust and cheating as defined under Section 405 and 415 of the Indian Penal Code and which reads as under:

> **405. Criminal breach of trust**.—Whoever, being in any manner entrusted with property, or with any dominion

> over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

8. A plain reading of Section 405 shows that entrustment of the property or dominion over the property and dishonest misappropriation or conversion of the same to his own use by the person who is entrusted with the property is one of the essential ingredients of criminal breach of trust. In ***State of Gujrat vs. Jaswantlal Nathalal*** (supra) the Apex Court has held that:

> "*8. The term "entrusted" found in Section 405 I.P.C. governs not only the words "with the property" occuring thereafter-see Velji Raghavji Patel v. State of Maharashtra , 1965-2 SCR 429 = (AIR 1965 SC 1433*). *Before there can be any entrustment there must be 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 Jaswantrai Manilal v. State of Bombay, 1956 SCR 483. The expression "entrustment" carried 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."*

9. In ***Bhaskarlal Sharma & Anr. v. Monica reported in*** (***2009) 10 SCC 604*** the Apex Court has held as :

*"52....13... 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. Entrustment is not necessarily a term of law. It may have different implications in different contexts. In its most general significance, all its imports is handing over the possession for some purpose which may not imply the conferment of any proprietary right therein. The ownership or beneficial interest in the property in respect of which criminal breach of trust 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."*

10. Section 415 defines cheating as under:

**415. Cheating**.—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".

11. A plain reading of the section would show that deception and inducement are essential ingredients of the offence of cheating, as defined under section 415 IPC.

12. In the present case, the FIR as well as the statements recorded in the course of investigation reveal that Mumbai Cricket Association had given to Pradeep Jhaveri five complimentary passes of the cricket match to be played at Wankhede Stadium between 14th November, 2013 and 18th November, 2013. Said Pradip Jhaveri had handed over the said complimentary passes to his son, the petitioner herein, for his own use and the use of his family and friends. It is alleged that the petitioner had sold these passes to Girish Premna for Rs.10,000/- each, who in turn sold the same at exorbitant price and had thereby indulged in black-marketing.

13. The material on record taken at its face value, does not indicate that Mumbai Cricket Association or Pradip Jhaveri had retained ownership of the said passes or that Pradip was holding the

said passes for the benefit of or on behalf of the Mumbai Cricket Association. On the contrary, the records reveal that the Mumbai Cricket Association had given the said complimentary passes to Pradip Jhaveri since he was a volunteer of the Mumbai Cricket Association. There was no obligation on Pradip Jhaveri to return the said complimentary passes, but it was meant for his use. There was thus no creation of trust in favour of Pradip Jhaveri and consequently there could be no breach of trust. The facts alleged do not constitute "entrustment" which is the essence of offence under section 405 IPC.

14. The records reveal that Pradip Jhaveri, who had become the beneficial owner of the passes had given the passes to his son, the petitioner herein, for his own use and use of his family and friends. The petitioner had sold the said passes to the co accused Girish Premna. It is to be noted that the Mumbai Cricket Association had not imposed any restrictions on the use or transfer of the passes. A perusal of the complimentary passes also reveals that there were no restrictions on transfer of the passes. Furthermore, there are no

allegations that the petitioner had deceived any person or had induced any person to purchase the said complimentary passes. Hence, the sale of the complimentary passes would not per se attract provisions of Section 420 of the Indian Penal Code.

15. The allegations in the FIR and the other material on record lacks the basic essential ingredients viz. requirement of entrustment of the property, dishonest misappropriation or conversion of the same to own use and further dishonest deception of any person. Consequently, the prosecution of the petitioner for the offence of criminal breach of trust and cheating would be abuse of process of law and is therefore liable to be quashed.

16. We may note here that the petitioner has stated in para 4(c ) of the petition that the allegations at the most may constitutes offence under Section 131 (b)(2) read with 33(X) of the Bombay Police Act, 1951. Shri Dinesh Ganpatrao Bhosale (PI), who has filed his affidavit on behalf of respondent no.2 has denied that the allegations leveled against the petitioner and the other co-accused

attract the aforesaid provisions under Bombay Police Act. Furthermore, the Lnd App has also not urged anything in this regard. We have therefore not gone into the question whether the allegations leveled against the petitioner constitute offence under section Section 131 (b) (2) read with 33(X) of the Bombay Police Act, 1951.

17. Under the circumstances and in view of discussion supra, the application petition is allowed. We hold that in the proceeding pending before the learned Addl. Chief Metropolitan Magistrate's 47th Court, Esplanade, Mumbai, C.C.No.173 of 2014, no case is made out against the petitioner for offences under Section 406, 420 read with 34 of the Indian Penal Code arising out of C.R.No. 111 of 2013 registered with Marine Driver Police Station. Hence no charge can be framed against the aforesaid petitioner for the said sections.

18. We make it clear that this order shall not come in way of the Magistrate in summoning the petitioner, framing charge or explaining substance of accusation to the petitioner in respect of any other

offence including the offence under Section 131(b)(2) read with 33(X) of the Bombay Police Act, 1951, if the learned Magistrate is satisfied that the material on record, prima facie discloses such offence.

**(ANUJA PRABHUDESSAI, J.)** **(A.S.OKA, J.)**