

VRJ

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

**WRIT PETITION NO.1730 OF 2022**

Silky Enterprises, through proprietor  
Faizullah Khan & Anr. ... Petitioners  
V/s.  
The State of Maharashtra & Ors. ... Respondents

Mr. Rajesh Jain for the petitioners.

Mr. A.R. Patil, APP for the respondent No.1/State.

Mr. Aabad Ponda, Senior Advocate with Mr. Gaurav  
Parkar and Mr. Darshit Dave i/by AVP Partners for the  
respondents.

**CORAM : AMIT BORKAR, J.**

**DATED : APRIL 17, 2023**

**P.C.:**

1. The original complainant is challenging order dated 1<sup>st</sup> March 2022 passed in Criminal Revision Application No.134 of 2022 passed by the learned Additional Sessions Judge and Sessions Court, Greater Mumbai.

2. The petitioner is a complainant who had filed a complaint against the accused person for offences under sections 379, 406, 420, 425 read with section 34 of the Indian Penal Code, 1860. According to the allegations in the complaint, the complainant is the owner of the JCB vehicle bearing Engine No.84481482, Chassis No.PUNJD21BKJ2683286. The said vehicle is hypothecated with

Yes Bank and the complainant is paying EMI towards repayment of loan. On 17<sup>th</sup> May 2019, the officer of accused No.1/Company under the instructions of accused Nos.2 to 6 lifted the vehicle mistakenly though the vehicle was not hypothecated with the accused. The complainant, therefore, prayed for issuance of process for offences under sections 379, 406, 420, 425 read with section 34 of the Indian Penal Code, 1860.

3. The Magistrate by order dated 30<sup>th</sup> September 2021, issued process for offences under sections 379 and 406 read with section 34 of the Indian Penal Code, 1860. The accused being aggrieved by the said order challenged it by Criminal Revision Application No.134 of 2022. The revisional Court partly allowed the revision holding that there is no material on record to show that vehicle was entrusted by the complainant to the accused and/or there was any misappropriation as contemplated under section 406 of the Indian Penal Code, 1860.

4. The complainant has, therefore, filed present petition challenging the order of the revisional Court setting aside order of issuance of process qua section 406 of the Indian Penal Code, 1860.

5. Section 405 of the Indian Penal Code, 1860 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”.”

6. On reading of section, it is clear that following are the ingredients of the offence under section 405 punishable under section 406.

(i) Entrusting a person with a property, or with any dominion over property.

(ii) That the person such entrusted dishonestly misappropriates or converts the property to his own use or dishonestly uses or disposes of property or wilfully makes any other person to suffer in violation of any direction of law or any legal contract made touching discharge of such trust.

7. In the facts of the case, from the averments in the complaint it is clear that there is no entrustment of vehicle in question by the complainant to the accused. Neither the accused had misappropriated nor converted such entrusted property for its own use and, therefore, essential ingredients of the offence under section 405 punishable under section 406 are not made out.

8. The ingredients of section 406 have been interpreted by the Apex Court in the case of **S.W. Palnitkar v. State of Bihar**, reported in (2002) SCC (Cri.) 129 wherein the Apex Court has delineated principles for attracting ingredients of offence under section 405 punishable under section 406 of the Indian Penal Code, 1860.

9. In the facts of the case, the revisional Court has categorically

recorded a finding that in absence of entrustment by the applicant of the vehicle, the offence under section 406 is not made out.

**10.** There is neither miscarriage of justice nor error of jurisdiction calling for interference.

**11.** The writ petition is, therefore, dismissed. No costs.

**(AMIT BORKAR, J.)**