*(Corrected as per speaking to minutes order dated 3.10.2023).*

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CRIMINAL APPELLATE JURISDICTION
### CRIMINAL APPLICATION NO.466 OF 2020

Suresh Maganlal Mehta ... Applicant.
Versus
1.The State of Maharashtra
2.M/s Nikita Enterprises ... Respondents.

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Mr Junaid S. Shabwany, Advocate for applicant.
Mr HJ Dedhia, APP for State.
Mr Santaram A. Tarale for Respondent No.2.

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**Coram : R.N.Laddha, J.**

**Date: 12 September 2023.**

**P.C.** :

Heard Mr Junaid S. Shabwany, the learned Counsel for the applicant; Mr.Santaram A.Tarale, the learned Counsel appearing on behalf of the second respondent; and Mr HJ Dedhia, learned APP for the respondent/State.

2. The Applicant, accused in RCC No.114 of 2015, has approached this Court under Section 482 Cr.P.C. for quashing and setting aside the order dated 16.11.2018 of the Additional Sessions Judge, Pune, in Criminal Revision No.383 of 2015. By the said order, the learned Judge issued a process

against the applicant and four others under Sections 406 and 420 read with 34 of the Indian Penal Code (IPC) and quashed and set aside the order dated 20.08.2015 passed by the learned Magistrate in RCC No.114 of 2015 whereby the learned Magistrate refused to issue a process and dismissed the complaint.

3. It is the case of the complainant that Suresh Maganlal Mehta, the accused, had placed an order for iron sheets amounting to Rs.5,79,845/-. The goods were delivered as per the order. Suresh assured the complainant that the payment would be made within 15 days. Despite numerous requests from the complainant, Suresh only paid Rs.35,000/- and declined to pay the remaining balance.

4. Mr.S.A.Tarale, learned Counsel for the second respondent/original complainant, submitted that the allegations in the complaint satisfied the ingredients of Section 420 of IPC as the Applicant intentionally deceived respondent No.2. According to the learned Counsel, it is not necessary to reproduce in the complaint and the verification statement all the ingredients of the offence, nor it is necessary that the complainant should state in so many words that the intention

of the accused was dishonest and fraudulent. It is submitted that the averments in the complaint make out a prima facie case for issuance of a process against the accused, and the impugned order of the Magistrate reflects non-application of mind. In support of his contentions, he relied on ***Rajesh Bajaj Vs. State NCT of Delhi & Ors. (1999)3 SCC 259.***

5. Perused the records, more particularly, the complaint and the verification statement of the original complainant. It is important to note that in order to find someone guilty under Section 420 of the Indian Penal Code, it is necessary to demonstrate that they had fraudulent or dishonest intentions while making the promise. In the present case, the records show that the second respondent supplied goods to the accused, and the dispute arose from this commercial transaction. The allegations in the complaint and verification statement make it clear that the dispute is of a civil nature and can be resolved through civil law. Even if all the allegations in the complaint and the verification statement are accepted as true, there is no evidence to support the prosecution under Sections 406 and 420 of IPC against the applicant. Nothing is on record to suggest that the applicant had *malafide* intentions. Without a culpable intention at the time of

making a promise, no offence under Section 420 of IPC can be established.

6. An offence of criminal breach of trust is defined under Section 405 of IPC. It inherently requires the property to be entrusted. This is followed by a dishonest misappropriation or conversion of the property by the agent for personal use or disposal of the property in violation of the law that dictates how the entrustment should be handled. It could also involve a dishonest use or disposal of property in violation of any legal contract, either express or implied, concerning the handling of the entrustment or deliberately permitting another person to do so. To establish a charge under this section, the prosecution must prove both the entrustment of the property and one or more of the other alternatives mentioned above, with dishonest intent being the key element. However, in this case, no aspects of criminal breach of trust are evident.

7. In such circumstances, to prevent abuse of the process of Court, and to ensure justice, it becomes imperative to quash and set aside the impugned order of the learned Sessions Judge. The learned Magistrate has rightly concluded that the

alleged facts in the complaint and verification do not constitute any criminal offence against the applicant/accused.

8. As a result, the order of the learned Additional Sessions Judge in Criminal Revision Application No.383 of 2015 dated **16.11.2018** is quashed and set aside *qua* the applicant only, and the order passed by the learned Magistrate refusing to issue a process against the present applicant is upheld.

**[R.N.Laddha, J.]**