

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

CRIMINAL APPLICATION NO.576 OF 2023

Abhishek Madhukar Pathak & Ors.

..Applicants

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Nishant Katneshwarkar a/w Shrirang Katneshwarkar, for the Applicants.

Mr. K. V. Saste, APP for the Respondent/State.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

DATE : 19th JUNE, 2023

PC.

1. This is an application for quashing of the FIR being Crime No.67 of 2023 registered with Colaba Police Station for the offence punishable under Section 406, 409, 34 of the IPC.

2. The allegations against the applicants are, though the amount of provident fund was deducted from the salary of the complainant, same was not deposited with the competent authority and as such, offence in question came to be registered upon complaint lodged by complainant/respondent.

3. The services of the respondent/complainant were hired in view of the contract of transportation to be executed by the

applicants who have defaulted in paying the amount as was promised. According to counsel for the applicants, already the proceedings are pending at the behest of the applicants before the NCLT and the Regional Provident Fund Commissioner. According to him, the respondent/complainant has already approached the Industrial Court for redressal of his grievance in relation to his service conditions and that being so, the prosecution is not maintainable.

4. We have appreciated the submissions in the light of the offence of criminal breach of trust as is defined under Section 405 of the IPC. The fact remains that after having deducted and received the Provident Fund contribution which is statutory obligation, if the applicants have failed to deposit the same with the competent authority, such act of the applicants falls within the definition of offence under Section 405 of the IPC, as could be inferred from explanations 1 and 2. The fact remains that the applicants have not deposited the amount as was deducted from the wages of employees towards the contribution of Provident Fund. The applicants by virtue of legal fiction of Provident Fund Act were entrusted the amount.

5. Apart from above, no statutory impediment demonstrated before us for the purpose of registration of offence because of the pendency of proceedings before the NCLT or other authority. In the case in hand necessary satisfaction of ingredients

of offence can be very much inferred. That being so, no case for quashing is made out.

6. The application as such stands dismissed.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]