



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 CRIMINAL APPLICATION NO.2291 OF 2024

- 1 Bharat Gangadhar Chaure,
Age 39 yrs., Occ. Business,
R/o Gat No.38, Sangram Nagar,
Behind Bembde Hospital,
Satara Parisar, Aurangabad.
- 2 Avinash Pandurang Sanap,
Age 37 yrs., Occ. Service,
Plot No.22/P, behind HP Gas,
Gat No.91, Satara, Aurangabad.
- 3 Deepak Babasaheb Funde,
Age 38 yrs., Occ. Business,
R/o Sekapur, Tq. Ashti,
Dist. Beed.
At present Ranjan Residency,
Plot No.2, Amdar Road,
Satara, Aurangabad.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
Satara Police Station,
Aurangabad.
- 2 Amol Sudhakar Kale,
Age 39 yrs., Occ. Service,
R/o Bhagwati, Plot No.38/A,
Satara Parisar, Gat No.103,
Aurangabad.

... Respondents

...

Mr. A.N. Nagargoje, Advocate h/f Mr. R.N. Jadhav, Advocate for applicants

Mrs. Priya R. Bharaswadkar, APP for respondent No.1

...

**CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.**

DATE : 08th AUGUST, 2024

ORDER :

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing the First Information Report vide Crime No.273/2022 dated 11.08.2022 registered with Satara Police Station, Dist. Aurangabad, for the offence punishable under Section 420, 406, 409 read with Section 34 of the Indian Penal Code, 1860 and the charge sheet bearing No.159/2023 i.e. Regular Criminal Case No.2483/2023 pending with Judicial Magistrate First Class, Aurangabad (Court No.18).

2 Heard learned Advocate for applicants and learned APP for respondent No.1. It is not even necessary to issue notice to respondent No.2.

3 Learned Advocate for applicants has taken us through First Information Report and contents of charge sheet. He submits that there was

a civil transaction between applicants and respondent No.2. It was in respect of purchase of a property. Then he has stated that cheques, which were issued by him and his friend (who is also the co-purchaser) and drawn on SBI and HDFC, were presented with Aavas Financiers Limited. At that time they were cheated and present applicants have misappropriated amount of Rs.9,00,000/- each, that is, of the informant and his friend. Learned Advocate for applicants submits that statement of the Bank official taken under Section 161 of the Code of Criminal Procedure discloses that cheque Nos.100926 and 000015 were never given to the Bank. Therefore, question of taking those cheques from Aavas Financiers Limited by the present applicants did not arise. Rather those cheques are the subject-matter of the proceedings under Section 138 of the Negotiable Instruments Act and when the notice was issued there was no reply by respondent No.2. In order to avoid the liability to pay the said amount a concocted First Information Report has been registered. Even the material in the charge sheet does not satisfy the ingredients of Sections 420, 406, 409 read with Section 34 of the Indian Penal Code and, therefore, the proceedings deserves to be quashed and set aside.

4 Perusal of the First Information Report would certainly show that there was some transaction between respondent No.2 and applicants,

however, according to informant, two cheques were given to Aavas Financiers Limited towards loan. Then, the question arises, who could have been the custodian of cheques. Documents of loan collected do not show cheque numbers, but that does not mean that those cheques were not issued or given to the Bank. It would then require to be considered as to on what basis the Bank officials were saying that those cheques were not handed over. The question of replacement of cheques can only be decided during the trial and, therefore, when there are allegations of cheating then entrustment and misappropriation, we do not find this case to be a fit case where we can exercise our powers under Section 482 of the Code of Criminal Procedure. Therefore, application deserves to be dismissed at the threshold. Accordingly, criminal application stands dismissed.

5 Before parting, we direct the learned Advocate for applicants to remove office objections in respect of deficit Court fee.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)