



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 1472 OF 2024

Nandkishore Shankarlal Trivedi

Aged 57 years, Occu.: Advocate,

R/o. 3 A, Pushpam CHS Ltd.

3rd Floor 6, K.D. Road

Vile Parle West, Mumbai - 400 056

(Accused No. 23).

.... APPLICANT

// V E R S U S //

The State of Maharashtra,

Through Police Station Officer,

Police Station City Kotwali,

Amravati, Tq. & Dist. Amravati.

... RESPONDENT

WITH

CRIMINAL APPLICATION (APL) NO. 1503 OF 2024

Subodh Chanddayal Bhandari,

Aged: 58 years, Occu. Chartered

Accountant, R/o. 1202, Ariana

Acropolis II, Deonar,

Mumbai-400 088

.... APPLICANT

// V E R S U S //

The State of Maharashtra,

Through the Superintendent

of Police, City Kotwali Police

Station

... RESPONDENT

Mr P. R. Agrawal, Advocate for the applicant in APL No. 1472 of 2024
Mr R. R. Vyas, Advocate for the applicant in APL No. 1503 of 2024
Mr C. A. Lokhande, APP for the State.

CORAM : G. A. SANAP, J.

DATE : 18.12.2024

ORAL JUDGMENT :

1 Both these applications arise out of Regular Criminal Case No. 847 of 2002 pending on the file of Chief Judicial Magistrate, Amravati (hereinafter referred to as 'the learned CJM'). The applicant in Criminal Application No.1472 of 2024 (hereinafter referred to as 'accused No.23') is arrayed as an accused No. 23 and the applicant in Criminal Application No.1503 of 2024 (hereinafter referred to as 'accused No.22') is arrayed as an accused No.22. The application made by accused No. 23 for discharge came to be rejected vide order dated 24.06.2024 passed by the learned CJM. The revision filed by accused No. 23 challenging this order was dismissed on 11.07.2024. The learned CJM framed the charge against accused No. 23 on 22.07.2024.

2 Accused No. 23 has challenged the order of rejection of his discharge application as well as the order of framing of a charge. The charge against accused No. 22 was framed on 01.07.2024. Accused No. 22 has challenged the charge principally on two grounds. Firstly, that before framing the charge he was not granted an opportunity of hearing and secondly, that there is no material to frame the charge against accused No. 22, *inasmuch* as the dispute is purely of a civil nature. In view of the above, both these applications are being disposed of by this common judgment and order.

3 Background facts:

Accused No. 22 and accused No. 23 were the directors of M/s. Home Trade Limited. In Regular Criminal Case No. 847 of 2002, there are 23 accused persons. The crime was registered on the basis of the report lodged by one Shri Babarao Janarao Bihade, the Divisional Joint Registrar, Co-operative Societies- Audit, Amravati Division at City Kotwali

Police Station, Amravati on 15.05.2002 for the offences punishable under Sections 406, 409, 420, 468 read with Section 34 of the Indian Penal Code (for short 'the IPC') against the Directors and Officers of the Amravati People's Co-operative Bank Ltd.(Now Cosmos Co-operative Bank Ltd.) (hereinafter referred to as 'the bank'), one Shri Ketan Seth, Chairman of the M/s. Giltedge Management Services Limited, Mumbai (hereinafter referred to as 'the Giltedge Limited') and M/s. Century Dealers Private Limited, Mumbai (hereinafter referred to as 'the Century Dealers'). It was stated in the report that the first transaction between the bank and Giltedge Limited was dated 15.01.2002. As per this contract, the bank was to sell government security "GOI 10.70% Government Stock 2020" to the Giltedge Limited. The total face value of the said security was Rs.4,00,00,000/- (Rupees Four Crores only). The sale consideration as per contract was Rs.4,60,00,000/- (Rupees Four Crores Sixty Lacs Only) with

accrued interest of Rs.10,34,333.33 on the date of the settlement i.e. 19.01.2002. The bank had agreed to deliver the said security within 15 days to the Giltedge Limited. As per the contract, it was agreed that Giltedge Limited instead of paying sale consideration of Rs.4,70,34,333.33 would purchase Government Security "GOI 8.07% Government Stock 2017". The total face value thereof was Rs.4,04,35,866.67. As agreed, the Giltedge Limited had to deliver the GOI 8.07% Government Stock 2017 to the bank within forty five days. The Giltedge Limited paid a difference amount of Rs.65,98,466.66 to the bank. The security GOI 10.70% Government Stock 2020 was delivered to the Giltedge Limited. The Giltedge Limited, despite the contract, failed to deliver the security i.e. GOI 8.07 % Government Stock 2017 to the bank. The second transaction was dated 28.02.2002 between the bank and Giltedge Limited. As per this contract, the bank was to sell government securities of a face value of Rs.5,50,00,000/-

(Rupees Five Crores Fifty Lacs Only) to the Giltedge Limited for a consideration of Rs.6,40,32,347.48. It was to be delivered physically to Giltedge Limited within 15 days. The Giltedge Limited, instead of paying the sale consideration, agreed to purchase the government securities having a face value of Rs.5,50,00,000/- and thereafter, delivered to the bank within forty-five (45) days. As agreed, the Giltedge Limited paid the difference amount of Rs.60,76,097.48 to the bank.

4 It was alleged in the report that the Directors of the bank and office bearers in collusion and in connivance with the Directors of Giltedge Limited and Century Dealers did not deliver the government securities as agreed to the bank. In collusion they have caused wrongful loss to the tune of Rs.9,70,00,000/- (Rupees Nine Crores Seventy Lacs only) to the bank.

5 The Home Trade Limited and its office bearers

were not named in the report. However, the investigation revealed that in order to deliver the securities to the bank, the Giltedge Limited, in connection with the first transaction, entered into an agreement with Home Trade Limited. The said transaction as mentioned in the contract note was on “Principal to Principal” basis. Thus, Home Trade Limited was a “Principal Seller” and Giltedge Limited was a “Principal Buyer” of the security. As per this transaction, the Home Trade Limited was to deliver the securities to the Giltedge Limited. The Home Trade Limited, despite an agreement with Giltedge Limited, did not deliver the securities to the Giltedge Limited. The office bearers of the bank, Giltedge Limited, Century Dealers Limited and Home Trade Limited, according to the prosecution, in furtherance of their common intention committed the offence of cheating, criminal breach of trust and forgery. The investigation in the crime culminated in filing the charge-sheet.

Limited made an application for discharge contending that no offence has been committed by Home Trade Limited and ultimately by him. There was no privity of contract between the bank and Home Trade Limited. The contract between the Giltedge Limited and Home Trade Limited had nothing to do with the initial contract between the bank and Giltedge Limited. The bank had filed the civil suit against the Giltedge Limited, Century Dealers and Home Trade Limited. The suit was initially dismissed. However, in the appeal, the judgment and decree was set aside and the Giltedge Limited was held responsible for the first transaction and the Century Dealers Limited was also held responsible for the second transaction. The Division Bench (Coram : A. S. Chandurkar and Pushpa V. Ganediwala, JJ.) of this Court in *First Appeal No. 361 of 2010 (The Amravati Peoples' Co-operative Bank Ltd. .v/s. M/s. Geltege Management Ltd. and others, decided on 07.04.2021)* recorded the finding that there was no privity of

contract between the bank and Home Trade Limited and therefore, they were not held liable to deliver the securities or the face value of the securities to the bank.

7 It is further submitted that on account of a failure of Home Trade Limited to deliver the securities to the Giltedge Limited, the arbitration proceeding was filed by the Giltedge Limited against Home Trade Limited at Pune Stock Exchange. The privity of contract between Giltedge Limited and Home Trade Limited was with regard to the security “GOI 8.07% Government Stock 2017”. The contract between Giltedge Limited and Home Trade Limited was on a principal-to-principal basis. The Home Trade Limited was the principal Seller and Giltedge Limited was the principal buyer. In the said arbitration proceeding, the award was passed on 20.01.2003 directing the Home Trade Limited to pay an amount of Rs.16,89,04,938.96. It is submitted that there was no entrustment of property or security by a bank to Home Trade

Limited. The transaction between Giltedge Limited and Home Trade Limited was purely of a civil nature. It was a contract of a purchase and sale. It is submitted that by no stretch of imagination the contract note between Giltedge Limited and Home Trade Limited could be a forged document. It is submitted that the Home Trade Limited and the office bearers of the Home Trade Limited have been unnecessarily dragged in the criminal prosecution. The Division Bench of the Bombay High Court at Nagpur Bench in First Appeal No. 361 of 2010 has completely exonerated Home Trade Limited and accused Nos. 22 and 23. It was held by the Division Bench that they were not liable to pay any amount to the bank because there was no privity of contract between Home Trade Limited and the bank. It was held that privity of contract was between Giltedge Limited and Home Trade Limited and therefore the Giltedge Limited would have the right to prosecute its remedy against Home Trade Limited. It is submitted that there was no

tripartite agreement between the bank, Giltedge Limited and Home Trade Limited. It is submitted that the judgment of the Civil Court is binding on the criminal Court. Learned CJM has failed to consider all these aspects and rejected the application for discharge.

8 According to accused No. 22, before framing the charge he was not granted an opportunity of hearing. The charge was framed without granting an opportunity to present his argument. According to accused No. 22, the roznama of the proceeding indicates that no hearing was conducted. It is further contended by accused No. 22 that the material on record is not sufficient to frame the charge against him. He was Director of the Home Trade Limited. The Home Trade Limited has not been made an accused in the criminal case. Accused No. 22 has adopted the contention of accused No. 23.

9 Learned Advocates for the applicants submitted

that there was no entrustment of any property or security by the bank to the Home Trade Limited. There was no privity of contract between the bank and Home Trade Limited. The privity of contract was between the bank and Giltedge Limited and in respect of the second transaction with Century Dealers. The learned Advocates submitted that there was a contract between Giltedge Limited and Home Trade Limited dated 22.01.2002 for a purchase of security namely “GOI 8.07% Government Stock 2017” of the face value of Rs.4,00,00,000/- (Rupees Four Crores only). The learned Advocates submitted that there was no report or complaint by Giltedge Limited against the Home Trade Limited. The learned Advocates submitted that in the civil suit filed by the bank in respect of these two transactions, which are the subject matter of the criminal case, the Giltedge Limited and Century Dealers were held responsible to pay the decretal amount. In the judgment of the Division Bench of the High Court, the Home Trade

Limited and its office bearers were not held jointly and severally liable with the Giltedge Limited and Century Dealers to pay the decretal amount. It was held by the Division Bench that there was no privity of contract between Home Trade Limited and the bank. Learned Advocates pointed out that the Division Bench has held that the privity of contract was between Giltedge Limited and Home Trade Limited and therefore, Giltedge Limited would have to prosecute its remedies against the Home Trade Limited. The learned Advocates further submitted that the contract between Home Trade Limited and Giltedge Limited was separate, distinct and independent from the contract between the bank and Giltedge Limited. The learned Advocates submitted that on account of the breach of the said contract, the Giltedge Limited had filed arbitration proceeding at the Pune Stock Exchange against the Home Trade Limited. There was an arbitration clause in the said contract dated 22.01.2002. The award has been passed by

holding that there was a legally enforceable contract between the parties. The learned Advocates submitted that therefore the contract document between the Giltedge Limited and Home Trade Limited could not be said to be a false document. It is submitted that there was no entrustment of any property to the Home Trade Limited by the bank. Home Trade Limited had no privity of contract with the bank and therefore, the question of honoring any commitment with the bank by Giltedge Limited would not arise at the behest of the Home Trade Limited. There was no deception or misrepresentation of any sort to cause wrongful loss to the bank at the behest of the Home Trade Limited. It is submitted that since the Home Trade Limited has been held liable to pay the amount of Rs.16,89,04,938.96 as per the award, it could not be said that there was a wrongful gain to the Home Trade Limited. The learned Advocates submitted that the learned CJM has failed to consider all these aspects. The civil dispute between the

Giltedge Limited and Home Trade Limited has been brought within the dragnet of criminal law. The learned Advocates submitted that the judgment of the civil court is binding on the criminal court and therefore, accused Nos. 22 and 23 deserve to be discharged. The learned Advocates further submitted that the offence of cheating and offence of criminal breach of trust cannot go hand in hand. It is submitted that these offences are antithesis of each other. In order to seek support to this submission reliance has been placed on the decision in the case of *Delhi Race Club (1940) Limited and others .v/s. State of Uttar Pradesh and another*¹.

10 Learned APP Mr C. A. Lokhande submitted that during the course of investigation ample evidence has been collected to establish the involvement of the Home Trade Limited and Directors of the Home Trade Limited. The learned APP submitted that for and on behalf of Home Trade

1 Cri.Apeal No. 3114 of 2024 decided on 23.08.2024

Limited, accused Nos. 22 and 23 had signed number of documents. The learned APP submitted that the transaction between Giltedge Limited and Home Trade Limited cannot be separated from the initial transaction between the bank and Giltedge Limited. The learned APP submitted that with the aid of Section 34 of the IPC, the Home Trade Limited and its office bearers would be liable to face the prosecution for the breach of a trust committed in the first transaction. Learned APP submitted that no case has been made out to entertain their contention at this stage. The learned APP submitted that at the stage of framing of charge, the Court has to sift the material for a limited purpose. The thorough analysis of the material is not permissible. The learned APP submitted that these applications deserve to be rejected.

11 It is necessary to state at the outset that before framing the charge, accused No. 23 had applied for discharge. His discharge application has been rejected by the learned CJM.

The revision filed by him against the said order also came to be rejected on 11.07.2024. The charge has been framed against him on 22.07.2024. The application for discharge was not made by accused No. 22. It is his principal grievance that he was not heard at the stage of framing of a charge. It is the contention of accused No. 22 that his case is at par with the case of accused No. 23, being the office bearers of Home Trade Limited and therefore, he would have made good his submission for discharge at the stage of framing of a charge. Accused No. 22 has raised the grounds identical to the one raised by accused No. 23. It is to be noted that Giltedge Limited and Home Trade Limited were concerned only with the one transaction namely the purchase of security "GOI 8.07% Government Stock 2017". The contract dated 22.01.2002 between them was on a principal-to-principal basis. The bank was not party to this transaction. This contract was independent and separate from the contract between the bank

and Giltedge Limited.

12 After filing of the report, on behalf of the bank, a civil suit was filed for delivery of the securities or for recovery of the money. In the said suit, Giltedge Limited, Century Dealers and Home Trade Limited were the principal defendants. The suit was dismissed by the trial Court. The bank filed First Appeal bearing No. 361 of 2010 before the High Court. The Division Bench of the High Court vide judgment and order dated 07.04.2021 decided the appeal and held the Giltedge Limited and Century Limited liable to satisfy the claim of the bank. No liability was fastened on the Home Trade Limited and its Directors by holding that there was no privity of contract between the bank and Home Trade Limited. The Division Bench of the High Court has observed that the bank had entered into a transaction dated 15.01.2002 with defendant No. 1 (Giltedge Limited) for the sale of security i.e. GOI 10.70% Government Stock 2020 valued at

Rs.4,00,00,000/- (Rupees Four Crores Only). The securities were delivered to Giltedge Limited on 28.02.2002. The Giltedge Limited paid a difference amount of Rs.65,98,466.66 to the bank. The Division Bench held that the Giltedge Limited failed to deliver the “GOI 10.70% Government Stock 2020” and “GOI 8.07% Government Stock 2017” to the bank as per the agreement. The Division Bench has also held that the transaction dated 28.02.2002 was by the bank with the Giltedge Limited and Century Dealers for the sale of securities of a face value of Rs.5,50,00,000/- (Rupees Five Crores Fifty Lacs only). The said securities were delivered to the Giltedge Limited on 07.03.2002. The Giltedge Limited paid the difference amount of Rs.60,76,097.48. The Division Bench has held that the Giltedge Limited and Century Dealers failed to deliver the securities to the bank as agreed. The Division Bench has recorded a categorical finding that the transactions dated 15.01.2002 and 28.02.2002 were in the nature of sale

and purchase of securities and not exchange of securities. The Division Bench of this Court has held that the principal transaction was between the bank and Giltedge Limited and therefore Giltedge limited alone was responsible for delivering the security GOI 8.07% Government Stock 2017 to the bank. It is observed that the Giltedge Limited may have further sought to purchase security GOI 8.07% Government Stock 2017 from defendant No. 5 (Home Trade Limited), but the bank was not concerned with the same. It was a matter between Giltedge Limited and the Home Trade Limited. The Giltedge Limited having taken delivery of security GOI 10.70% Government Stock 2020 from the bank and also having paid the difference amount of Rs.65,98,466.66 to the bank it was legally bound to deliver security GOI 8.07% Government Stock 2017 to the bank. The Division Bench of this High Court has categorically observed that the trial Court has wrongly held that as the Giltedge Limited had paid the difference amount to the

bank and the consideration of security GOI 8.07% Government Stock 2017 to the Home Trade Limited, it could not be held liable. The finding is recorded that the Giltedge Limited would have to pursue its own remedies against the Home Trade Limited for non-delivery of security GOI 8.07% Government Stock 2017 to it, as the bank did not have any privity of contract in that regard with defendant No. 5 (Home Trade Limited). In my view, this finding could not be glossed over. The judgment in the First Appeal was produced before the trial Court. The trial Court, as can be seen from the order, has failed to properly consider the same. In my view, this decision, in the First Appeal would have significant bearing *vis-a-vis* the criminal prosecution against accused Nos. 22 and 23.

13 It is to be noted that the plaint in the suit was amended and the averments with regard to the initiation of the criminal prosecution had been incorporated. The Division Bench, while deciding the First Appeal, has categorically held

that the transaction between the bank and Giltedge Limited was for the sale and purchase of the Government Securities. It is further observed that the liability in a civil suit has to be decided on the preponderance of probability. Considering the evidence and probability, the Home Trade Limited was not held liable on the touchstone of preponderance of probability. In this context, it is necessary to consider the legal consequences flowing from the contract dated 22.01.2002 between the Giltedge Limited and Home Trade Limited. The Giltedge Limited had purchased the security from the Home Trade Limited. On behalf of the Home Trade Limited, this contract was signed by accused No. 23. Accused No. 22 was not party to this contract. Even accused No. 23 signed this contract on behalf of the Company and not in his personal capacity. The contract document between the Giltedge Limited and Home Trade Limited is part of a charge-sheet. Perusal of this document, for a limited purpose, at this stage, shows that it was

a concluded contract of sale and purchase of Government Securities. It is evident on perusal of this document, which is part of charge-sheet, for the limited purpose, that it was a contract of sale and purchase of the Government Securities. The Giltedge Limited alleged that as agreed under this contract, the Government Security was not delivered within 45 days. It is to be noted that thereafter, the Giltedge limited filed the arbitration proceeding at Pune Stock Exchange Limited against the Home Trade Limited for delivery of securities or for recovery of the amount. The arbitration proceeding was finally decided vide award dated 20.01.2003. The copy of this award was placed before the learned CJM, Amravati. It is to be noted that while deciding First Appeal, the Division Bench has also considered this award. The relevant observations can be seen from para No.14 of the Judgment of the First Appeal. These observations have been made while dealing with the contention of the bank that Home Trade Limited was also

jointly and severally liable to pay the amount or deliver securities. The copy of this judgment in the First Appeal was relied upon before the learned CJM. It can be seen that the learned CJM took note of this judgment, however failed to consider it. Para 14 of this judgment is extracted below:

14. The plaintiff on 30.04.2002 issued a notice at Exhibit 192 to the defendant no.1 demanding delivery of Security No.2 or its value along with interest. In this context the defendant nos. 1 and 2 have relied upon the reply notice-Exhibit 216 sent by their legal advisors reiterating this stand. In the cross-examination of PW 2-Exhibit 281 it was suggested on behalf of the defendant nos. 1 and 2 that under the first transaction the plaintiff was to sell Security No.1 to the defendant no.1 and in exchange was to buy Security No.2. This was accepted to be correct by PW 2. The defendant nos. 1 and 2 had taken the stand that defendant no.1 was not a member of the Wholesale Debt Market and had hence sourced Security No.2 from the defendant no.5. PW 2 admitted that the defendant no.1 had paid the sale consideration of Security No.2 to the defendant no.5 and had also directed the defendant no.5 to supply Security No.2 to the plaintiff. He further admitted that during the course of investigation it was revealed that the defendant no.5 had not supplied Security No.2 to the plaintiff. The defendant no.5 had defaulted in honouring its commitment of delivering Security No.2. It is also seen that at Exhibit 389, the sole Arbitrator in

arbitration proceedings initiated by defendant no.1 had passed award on 20.01.2003 directing the defendant no.5 to deliver 12 securities as specified or pay an amount of Rs.16,89,04,938.96 to the defendant no.1. While defendant no.5 did not file its written statement the defendant no.5(a) denied the plaint allegations and stated that he had resigned as Director of the defendant no.5 company on 25.04.2002. Defendant no.5(b) also denied the liability to satisfy the suit claim.”

14 Above Observations are very relevant. Perusal of the award would show that the basis of the final award was the contract dated 22.01.2002. It was the case of the Giltedge Limited before the Arbitrator that it was a contract of the purchase of securities from the Home Trade Limited. The Giltedge Limited therefore reiterated that it was a valid and legally enforceable contract. This contract was made the basis of the final award directing the Home Trade Limited to pay an amount of Rs.16,89,04,938.96. It is further pertinent to note that the award was passed against the Home Trade Limited and not against the Directors and Office bearers of Home Trade Limited. Perusal of the award would show that the Home

Trade Limited was held liable for payment. It is to be noted that the security which was the subject matter of the contract is at Sr. No. 1 of the table of a purchase of various securities from Home Trade Limited by the Giltedge Limited. In my view, while framing the charge under Section 468 of the IPC, the learned CJM was required to consider this aspect.

15 Section 463 of the IPC defined Forgery. Forgery principally means making a false document or a record. Section 464 defines the making a false document. Section 464 needs to be extracted. It reads thus:

“464 Making a false document – [A person is said to make a false document or false electronic record-

First – Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of his document, electronic record or [electronic signature] was made, signed, sealed executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly -Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with 'electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly - Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]”

16 Keeping this definition of making a false document in mind, the allegations against accused Nos. 22 and 23 need appreciation. On plain reading of this Section 464 it is evident

that a valid agreement executed by and between the parties could not be said to be a forged document. It is further pertinent to mention that the Giltedge Limited did not make any grievance that this contract dated 22.01.2002 was forged. In fact, Giltedge Limited has reiterated that it was a legally enforceable contract and on the basis of the same the arbitration proceeding was initiated and in the said proceeding the award was passed against the Home Trade Limited. In my view, the learned Judge has failed to consider this fact *prima facie* at the stage of framing a charge.

17 In the above backdrop, it would be appropriate to advert to the report lodged by the Divisional Registrar, Cooperative Society at City Kotwali Police Station Amravati. Perusal of this report would show that the main allegation was made against the Giltedge Limited and Century Dealers. It is nowhere stated in this report that the bank had any transaction or a contract with Home Trade Limited. It was also not stated

that either Home Trade Limited or accused Nos. 22 and 23 in any manner misrepresented or deceived the bank. It is to be noted that during the course of the investigation of the crime the separate and independent contract executed by and between the Giltedge Limited and Home Trade Limited came to the knowledge of the investigating officer. The investigating officer in the entire charge-sheet has nowhere stated that there was any direct dealing or contract between the bank and Home Trade Limited. In the above context, it would be necessary to consider the specific allegation against accused No. 22 from the charge-sheet. As far as accused No. 22 is concerned, it was stated that after receipt of the Rs.5,50,00,000/- from the bank he sold the Security "Government of India 10% Bonds, 2014" to Cupnerate and sold security of 10 % GOI 2014 to Vallient Capitals Services Pvt. Ltd. The contract note was signed by accused No. 22. It is not the case of the bank that Home Trade Limited sold its Government Securities. There was a privity of

contract between the bank and Giltedge Limited. It is therefore apparent that the investigating officer has drawn the inference that there was a direct dealing between the bank and Home Trade Limited.

18 As far as accused No. 23 is concerned, it was stated that the bank sold Government Security 10.70% GOI 2020 of the face value to Giltedge Limited. It was further stated that as per the contract dated 22.01.2002, the Giltedge Limited agreed to buy the securities from the Home Trade Limited. The said contract was signed by accused No. 23. It was stated that as per the agreement between the Director of Giltedge Limited by name Ketan Seth and the Director of Home Trade Limited by name Sanjay Harish Agrawal it was decided that Home Trade Limited would directly sell the securities to the bank. Accused No. 23 signed the contract on behalf of the company. It was further stated that this contract dated 22.01.2002 was forged.

19 It is to be noted at this stage that there was no privity of contract between the bank and Home Trade Limited. It is not the case of the bank that the money or securities had been entrusted to Home Trade Limited. It is also not the case of the bank that the Home Trade Limited, contrary to the agreement, failed to deliver the securities or the money to the bank. The bank throughout contended that the privity of contract was with Giltedge Limited. While considering the aspect of forgery, I have observed that the document entered into by and between Giltedge Limited and Home Trade Limited was a valid and legally enforceable contract. It was accepted by the arbitrator to be a valid and legal contract. In my view, in this backdrop, the allegation of misappropriation and cheating needs appreciation. Before proceeding to highlight certain facts it would be necessary to consider the decision of Hon'ble Apex Court in the Case of *Delhi Race Club and others .v/s. State of UP and another (supra)*. In this case, the Hon'ble

Apex Court has elucidated the difference between the offence of criminal breach of trust and cheating. Para Nos. 24 to 30 would be relevant for addressing the issue. The same are extracted below.

**“DIFFERENCE BETWEEN CRIMINAL BREACH
OF TRUST AND CHEATING**

24. This Court in its decision in S. W. Palanikar & Ors, v. State of Bihar & Anr. reported in (2002) 1 SCC 241 expounded the difference in the ingredients required for constituting an offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420). The relevant observations read as under: -

"9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are: (i) there should be fraudulent

or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

25. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients.

In order to constitute a criminal breach of trust (Section 406 IPC): -

1) There must be entrustment with person for property or dominion over the property, and

2) The person entrusted: -

a) dishonestly misappropriated or converted property to his own use, or

b) dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:

i. any direction of law prescribing the method in which the trust is discharged; or

*ii. legal contract touching the discharge of trust
(see: S.W.P. Palanitkar (supra)).*

*Similarly, in respect of an offence under Section 420
IPC, the essential ingredients are: -*

- 1) deception of any person, either by making a false or misleading representation or by other action or by omission;*
- 2) fraudulently or dishonestly inducing any person to deliver any property, or*
- 3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see: Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) Cr.L.J. 3462 (SC))*

26. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

27. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 of

the IPC, punishable under Section 420 of the IPC.

28. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in *Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors.*, reported in (1973) 2 SCC 823 as under:

"4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs.35,000/-. There is also nothing to indicate that the respondents induced the appellant to pay them Rs.35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently

did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating. "

29. *To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.*

30. *The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the*

property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.”

20 In my view, the learned CJM has failed to consider this settled legal position while deciding the discharge application made by accused No. 23 and while framing the charge against accused No.22. In this case, it is not the case of the bank that there was a privity of contract between the bank

and Home Trade Limited. The transaction between Giltedge Limited and Home Trade Limited was a contract for purchase of securities. The contract document could not be said to be a forged document. There was no entrustment of movable property to the Home Trade Limited by the bank. The bank has no grievance of any nature against the Home Trade Limited. The Giltedge Limited took recourse to the remedy of resolution of a dispute under the contract by filing an arbitration proceeding. The Giltedge Limited did not lodge any complaint of a criminal breach of trust or cheating by Home Trade Limited. There was a privity of contract between Giltedge Limited and Home Trade Limited. The Giltedge Limited, in the factual situation, would have been the aggrieved person in case of breach of a contract dated 22.01.2002. In my view, therefore, the very genesis of this prosecution against accused Nos. 22 and 23 was not considered while framing the charge against them. The learned CJM was required to

consider the decision of the Division Bench of this Court in First Appeal. The decision of the Civil Court is binding on the criminal Court. The learned CJM, considering the role attributed to accused No.22 and 23, in *juxtaposition* with the above-stated admitted facts, was not justified in framing the charge against them. It is further pertinent to note that in a criminal case Home Trade Limited has not been made an accused. Accused Nos. 22 and 23 being the Directors have been prosecuted. This aspect has also been dealt with by the Division Bench while deciding the First Appeal. In my view, the above-stated admitted facts *vis-a-vis* the findings in the first appeal cannot be ignored. On consideration of these findings, the material on record and the allegations against accused Nos. 22 and 23, I am of the opinion that the learned Judge has failed to consider the same. *Prima facie* consideration of the material indicates that no case is made out to frame the charge against accused Nos. 22 and 23. In this view of the matter, I am of the

view that the order framing charge against accused Nos. 22 and 23 deserves to be quashed.

21 Accordingly, the criminal applications are **allowed**.

22 The charge framed against the accused No. 22 dated 01.07.2024 (Exh.1088/C) and the charge framed against accused No. 23 dated 22.07.2024 (Exh.1104/C) are quashed and set aside.

23 Accused No. 23 Nandkishor Shankarlal Trivedi and accused No.22 Subodh Chanddayal Bhandari are discharged from the Criminal Case No. 847 of 2002.

24 The criminal applications stand disposed of accordingly. Pending applications, if any, also stand disposed of.

(G. A. SANAP, J.)