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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 CRIMINAL WRIT PETITION NO. 233 OF 2024

Devidas Mayaji Wagh

VERSUS

The Police Station, Shrigonda And Another

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Mr. G.R. Bhumkar, Advocate h/f Mr. R.P. Bhumkar, Advocate for
Petitioner

Mr. A.M. Phule, APP for Respondent No.1 - State

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CORAM : SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.

DATE : 23 SEPTEMBER, 2025

PER COURT :-

1. The present writ petition has been filed for quashing of the FIR bearing C.R. No. 559 of 2023, dated 11.06.2023, registered with Shrigonda Police Station, District Ahmednagar, for offences punishable under Sections 406 and 420 of the IPC.

2. Hard Mr. G.R. Bhumkar holding for Mr. R.P. Bhumkar, learned Advocate for the petitioner and learned APP for Respondent No.2 – State. Respondent No.2 was served; however, she failed to appear.

3. In order to cut short, it can be stated that both the learned Advocates have argued in support of their respective submissions.

4. Perusal of the FIR would show that there was a transaction of purchase of onion from the informant by the present petitioner on 17.04.2022. The petitioner had purchased 585 quintals of onions at the rate of Rs.1,265 per quintal, amounting to Rs.7,40,025/-, and towards payment of the said amount, had issued a cheque bearing No. 19410 drawn on Axis Bank. The validity of the said cheque was until 29.07.2022; however, the amount was not paid, and the informant alleges that she has been cheated

5. It has been pointed out by the learned Advocate for the petitioner that the informant has filed Summary Criminal Case No. 1192 of 2022 before the Judicial Magistrate, First Class, Shrigonda, against the petitioner, alleging commission of an offence under Section 138 of the Negotiable Instruments Act. The subject matter of the said case pertains to the same cheque, i.e., Cheque No. 194101. Therefore, the learned Advocate for the petitioner submits that the present FIR is not maintainable.

6. Here, it is to be noted that the prosecution wants to contend that the petitioner has committed offence under Section 406 and 420 of the Indian Penal Code (IPC). The ingredients of Section 405 of IPC i.e. for criminal breach of trust are required to be fulfilled. In ***S.W. Palnitkar and others vs. State of Bihar and another***, [2002 SCC (Cri.) 129], it has

been held that the ingredients in order to constitute the criminal breach are; (i) entrusting a person with property or with any dominion over property, (ii) that persons entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation (i) of any direction of law proscribing the mode in which such trust is to be discharged (ii) of any legal contract made touching the discharge of such trust. Further in ***Satishchandra Ratanlal Shah Vs. The State of Gujrat and others*** [AIR 2019 SC 1538], it has been held that mere breach of contract does not constitute offence under Section 405 of the Indian Penal Code without there being case of entrustment. Further as regards the offence under Section 420 of IPC, in ***S.W. Palnitkar*** (supra), it has been held that the The ingredients of the 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. Now, taking into consideration these

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ingredients and applying them to the contents of the FIR, it appears that the transaction between the petitioner and the informant, as stated in the FIR, is purely civil in nature. Goods were sold and the amount was due, for that amount, which was due, cheque was given and it was dishonoured. There are no statements that the accused had the intention to cheat since the beginning. The mere statement that non-payment has resulted in cheating will not be sufficient to attract those ingredients of Section 420 of IPC. Furthermore, taking into consideration the contents of the FIR, we are of the view that Sections 406 and 420 of the IPC cannot go together, as one requires dishonest intention since the beginning, while the other requires entrustment, which should be then in the absence of such dishonest intention. Therefore, it appears that a civil dispute or remedy has been dragged for lodging the FIR; that too, this can directly be said to be a second attempt, as proceedings under Section 138 of the Negotiable Instruments Act have already been initiated and are still pending.

7. Learned Advocate for the petitioner has relied on ***J. Vedhasing vs. R.M. Govindan & Ors*** . [Criminal Appeal No.____ of 2022 arising out of SLP (CRL.) No.2864 decided by the Hon;ble Supreme Court on 11.08.2022]. However, it is on the point of double jeopardy; still part of it can be considered for the only purpose that, taking into consideration

the contrary decision, the matter has been referred to the larger Bench. Even he tried to rely on *T.T. Antony vs. State of Kerala* (2001) 6 SCC 181. In our view, the private complaint under Section 138 of the Negotiable Instruments Act and the FIR for offences punishable under Sections 406 and 420 of the Indian Penal Code cannot be treated as two FIRs, as one is a private complaint.

8. Taking into consideration the contents of the FIR as afore-stated, when the transaction is purely civil in nature, it cannot be given a criminal colour. Furthermore, when there is a specific provision for redressal under the Negotiable Instruments Act, and the ingredients of other sections provisions are not fulfilled, the FIR is not maintainable. We, therefore, allow the petition.

9. The FIR vide Crime No.0559 of 2023 dated 11.06.2023 for offence punishable under Sections 406 and 420 of the Indian Penal Code, registered with Shrigonda Police Station, District Ahmednagar, stands quashed and set aside as against the petitioner, namely; Devidas Mayaji Wagh.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE