IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

29 CRIMINAL APPLICATION NO.1286 OF 2023

Aniruddha Maheshchandra Kawathekar,
Age 41 yrs., Occ. Private Service as
Associate Vice President with ICICI
Lombard General Insurance Company
Limited, Aurangabad,
R/o 'Ashirwad', RH Nos.1 and 2,
Sara Garden, N-2, CIDCO, Aurangabad.

… **Applicant**

… **Versus** …

1 The State of Maharashtra
Through Police Inspector,
Police Station, Georai,
Tq. Georai, Dist. Beed.

2 Pandurang Nana Kolhe,
Age 50 yrs., Occ. Business i.e.
Furniture shop,
R/o Gajanan Nagar, Georai,
Tq. Georai, Dist. Beed.

… **Respondents**

…

Mr. R.S. Deshmukh, Senior Counsel i/b Mr. Vishal Chavan, Advocate for applicant

Mr. V.K. Kotecha, APP for respondent No.1

Mr. R.N. Chavan and Mr. A.L. Muley, Advocates for respondent No.2

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CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 05th AUGUST, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 initially for quashing First Information Report vide Crime No.337/2022 dated 02.07.2022 registered with Police Station, Georai, Tq. Georai, Dist. Beed, for the offence punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code, 1860 and later on by way of amendment for quashing the proceedings in Regular Criminal Case No.79/2024 pending before learned Judicial Magistrate First Class, Georai, Tq. Georai, Dist. Beed.

2 Heard learned Senior Counsel Mr. R.S. Deshmukh instructed by learned Advocate Mr. Vishal Chavan for applicant, learned APP Mr. V.K. Kotecha for respondent No.1 and learned Advocate Mr. Mr. R.N. Chavan for respondent No.2.

3 Learned Senior Counsel Mr. R.S. Deshmukh instructed by learned Advocate Mr. Vishal Chavan for applicant has taken us through the

entire charge sheet and submits that respondent No.2 – informant had applied for loan to Purnwadi Urban Co-operative Bank, Branch Georai in June, 2020. Present applicant has been arrayed as accused No.3. He is Associate Vice President with ICICI Lombard General Insurance Company Limited, Aurangabad. Company of applicant is in insurance business and also there is a tie up of the insurance company with certain banks, thereby an assurance is annexed or attached for the recovery of loan also when the premium is paid. The informant states that his Cash Credit loan was with the said bank and he had also applied for the Term loan. The Cash Credit loan account was bearing No.174/160 and Term loan was bearing No.172/704. Amount of Rs.10,00,000/- was sanctioned as Cash Credit loan and the said amount was credited to his account on 24.06.2020. Amount of Rs.15,00,000/- was then sanctioned on the Term loan and was also credited to the Term loan account. The Branch Manager Mr. Martand Renapurkar had told the informant that it is necessary to take insurance on both the loan accounts from ICICI Lombard General Insurance Company, in view of tie up. Amount of Rs.14,750/- was transferred from the accounts by the bank to ICICI Lombard General Insurance Company Limited towards premium. There is no dispute regarding these facts. However, when the said premium was deducted as per the contract by the bank and was credited to the Insurance company, the informant had not met any of the Insurance company officials at Aurangabad. There was no representation at all by the Insurance company to the informant. Still the informant states that his shop by name "Shri Jai Malhar Collection" got burnt due to short circuit on 15.01.2021. Informant states that he and his wife went to Purnwadi Urban Co-operative Bank, Branch Georai and informed about the fact and requested them for the hard copy of insurance policy. Thereafter the copies of policy were given through E-mail. At that time, he could notice that the installment of the premium was deducted from account on 24.06.2020 but on the policy the date was 28.10.2020. That means, the policy has been given after a delay of four months on one policy and on second policy, the policy was dated 15.08.2021. That means, it was given belatedly by 14 months. When the informant contacted the bank at Georai Branch, at that time he was told that he should contact the applicant and applicant's mobile number was given. When informant tried to contact the company, then also through the bank they had given evasive answers and, therefore, he has then lodged First Information Report on 02.07.2022. The basic ingredients of offence under Section 406 of the Indian Penal Code, under which the charge sheet is filed, though the First Information Report was in fact registered under Section 420 read with Section 34 of the Indian Penal Code, those will not get attracted.

4 Learned APP for respondent No.1 as well as learned Advocate for

respondent No.2 vehemently submitted that facts would certainly make it clear and those are supported by documentary evidence that the premium was deducted towards insurance on 24.06.2020 and, therefore, the period of insurance ought to have been started from 24.06.2020. It is stated that it was for a period of one year, but in the case of second policy it was rather given belatedly or the policy was wrongly given from 15.08.2021. When the premium that was deducted was from 24.06.2020, certainly, the bank as well as the insurance company want to avoid the contract. All the documents have been collected and charge sheet is filed, therefore, this cannot be taken as a fit case where the powers under Section 482 of the Code of Criminal Procedure can be exercised.

5 At the cost of repetition, it can be stated that there is no dispute regarding the fact that the informant had applied for Cash Credit loan as well as Term loan. He has clearly stated that he runs business under the name and style “Shri Jai Malhar Enterprises” and his wife runs a shop under the name and style “Shri Jai Malhar Collection”. It appears that both the businesses were separate and from the documents, those have been collected in the charge sheet, both businesses are proprietary concerns. The registration certificate of GST in the name of informant regarding proprietorship is for the business “Shri Jai Malhar Enterprises”. Amount of

Rs.10,00,000/- as Cash Credit loan was granted to “Shri Jai Malhar Enterprises” and period of repayment was one year. There is also a document dated 14.07.2022 given by Georai Branch of the bank that in all six types of loan and accounts of informant and his wife were with the said branch. Current Account of “Shri Jai Malhar Exterprises” is bearing No.21/539, Cash Credit Account is bearing No.174/160 and Term Loan Account is bearing No.172/204; whereas Current Account of “Shri Jai Malhar Collection” is bearing No.21/743, Cash Credit Account is bearing No.174/161 and Term Loan Account is bearing No.172/205. The account extracts of all of them and relevant documents from the bank have been collected. Now, as regards facts in the present case are concerned, as aforesaid, Rs.10,00,000/- was granted to “Shri Jai Malhar Enterprises” in the form of Cash Credit and Rs.15,00,000/- was for “Shri Jai Malhar Collection”. Interestingly, informant has stated in First Information Report that for some reasons the cloth shop which was in the name of “Shri Jai Malhar Collection” in Lad Complex, Georai was transferred to a shop premises in the same name in Swayambhu Complex, Kamalapur phata, Ranjangaon MIDC, Waluj, Aurangabad. Exact date of transfer is not stated and it is also surprised by the informant that whether the fact of transfer of the said shop was ever informed to the bank as well as to the Insurance company or not. The insurance was in respect of stock at the place which was shown at the time of disbursement of loan. The said transfer of the shop should have been then informed by the informant. He is totally silent as to from which place then “Shri Jai Malhar Enterprises” was functioning, after the transfer of shop carried on under the name “Shri Jai Malhar Collection”. Unfortunately, due to short circuit the said cloth shop fell to the fire on 15.01.2021. Though the premium was deducted on 24.06.2020, there was no attempt on the part of informant till 15.01.2021 to get the copies of policy. Now, he is raising objection that though the premium was deducted on 24.06.2020; yet the date of start of policy is differently given in both the policies. It is not only the duty of insurance company or even in this case since there is a tie up of the bank also that immediately the policy should have been given after the deduction of premium, but it was also the duty of the customer to get the policy document within time. Here, in this case, First Information Report is silent on the point that when the fact about deduction of premium amount was communicated by the bank authorities to the insurance company.

6 When the present applicant had never came in contact with the informant, there was no question of cheating and the premium amount has been transferred to the account of the bank and not on the individual name of the applicant. In order to prove the offence under Section 406 of the Indian Penal Code we will have to consider the ingredients as per the

definition of the offence under Section 405 of the Indian Penal Code. 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 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. This has been observed in **S.W. Palnitkar and others vs. State of Bihar and another** [2002 SCC (Cri.) 129] and **Kailash Kumar Sanwatia vs. The State of Bihar and another** [2003 (7) SCC 399]. Further, in **Satishchandra Ratanlal Shah vs. The State of Gujarat 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. Here, the contract that would have been made, even if we take that the date of policy ought to have been from 24.06.2020, it was in respect of the cloth shop at Georai and not at Ranjangaon MIDC, Waluj, Aurangabad. Therefore, no criminal angle or offence can be said to have been made out. If at all cognizance has been taken in the matter, since charge sheet came to be filed on 29.02.2024, it can be said that it has been taken wrongly. When the ingredients of offence are not made out, we take this to be a case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

i) Criminal Application stands allowed.

ii) The proceedings in Regular Criminal Case No.79/2024 pending before learned Judicial Magistrate First Class, Georai, Tq. Georai, Dist. Beed, arising out of First Information Report vide Crime No.337/2022 dated 02.07.2022 registered with Police Station, Georai, Tq. Georai, Dist. Beed, for the offence punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant viz. **Aniruddha Maheshchandra Kawathekar**.

(SANJAY A. DESHMUKH, J.) **(SMT. VIBHA KANKANWADI, J.)**

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