



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2356 OF 2022

Laxminarayan S/o Jaynarayan Rathi
Age: 75 years, Occu. Business,
Shri Ramdeobaba Charitable Society
Residing at Near Shakil Garage,
Plot No. 104, B-Wing, Nisarg Park, Akola.

...APPLICANT

VERSUS

1. The State of Maharashtra
Through Incharge Police Inspector
Partur Police Station, Tal. Partur,
Dist. Jalna.
2. Ubed Bin Salam Chaus
Age: Major, Occu. Office Superintendent
In Municipal Council, Partur, Tal. Partur,
Dist. Jalna.
3. Municipal Council Partur,
Through Chief Executive Officer,
Partur.

...RESPONDENTS

Ms. A.S. Jadhav, Advocate for applicant
Mr. N.S. Tekale, APP for State
Mr. Pawan K. Lakhotiya, Advocate for respondent No. 3

**WITH
CRIMINAL APPLICATION NO. 139 OF 2023
WITH
CRIMINAL APPLICATION NO. 4689 OF 2024
IN
CRIMINAL APPLICATION NO. 139 OF 2023**

Punkaji s/o Manikrao Kumbhare,
Age: 50 years, Occu. Service as Head
Infrastructure of SGS India Private Limited,
R/o. C-702, Venkatesh Flora,
Phase-I, Kunveer Prabhu Nagar,

Near Hadapsar Mundhwa, Pune.

...APPLICANT
[Orig. Applicant]

VERSUS

1. The State of Maharashtra
Through Police Inspector
Partur Police Station, Tal. Partur,
Dist. Jalna.
2. Ubed Bin-Salam Chaus
Age: 53 years, Occu. Service,
R/o. Nagar Parishad, Partur,
Tq. Partur, Dist. Jalna.
3. Municipal Council Partur,
Through Chief Executive Officer,
Tal. Partur, Dist. Jalna.

...RESPONDENTS

Mr. A.S. Bajaj, Advocate for applicant
Mr. N.S. Tekale, APP for State
Mr. Pawan K. Lakhotiya, Advocate for respondent No. 3

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CORAM : NITIN B. SURYAWANSHI AND
SANDIPKUMAR C. MORE, JJ.

RESERVED ON : 04th AUGUST, 2025
PRONOUNCED ON: 04th SEPTEMBER, 2025

ORDER : [PER NITIN B. SURYAWANSHI, J.]

1. These applications filed under Section 482 of Code of Criminal Procedure seek quashing of proceedings of R.C.C. No. 298 of 2022, arising out of FIR No. 548 of 2020, registered with Partur Police Station, Taluka- Partur, Dist. Jalna for offences punishable under Sections 409, 420 read with 34 of Indian Penal Code.

2. Authorized by Chief Officer, Office Superintendent of Municipal Council Partur on 10.12.2020 lodged FIR alleging that Partur Municipal Council floated tenders and invited bids in respect of Integrated Housing and Slum Development Program (IHSDP) for construction of tenements/Gharkuls. Shri. Ramdeobaba Charitable Society and Gajanan Construction Infra Ltd. were given contract for construction of 441 Gharkuls/tenements in Survey No. 297 and 299 for Rs. 18,30,52,000/-. Agreement to that effect was executed on 29.04.2010. The construction was to be supervised and monitored by Project Management Consultancy (PMC) and Third Party Inspection and Monitoring Agency Services (TPIMA) to be appointed by MHADA. The construction work was done as per the agreement. When joint inspection was done by the Chief Officer and Vigilance and Quality Control Division, MHADA, they found that construction was of sub standard quality. Gajanan Construction and Infra Pvt. Ltd., Ramdeobaba Charitable Society, Project Management Consultancy and Third Party Supervising Agency appointed by MHADA in collusion have cheated the Government and misappropriated the Government funds.

3. Applicant in Criminal Application No. 2356 of 2022 is the President of Shri. Ramdeobaba Charitable Society (for short "Applicant-Society"). Applicant-society was given contract to construct to 359 Gharkuls at Indira Nagar slum area. Agreement of construction of tenements was executed by the Chief Officer and the applicant-society.

4. Learned advocate for applicant-society submitted that work of construction of Gharkuls allotted to the applicant-society was completed during the period between 2011 to 2014 and completion certificate was given to the applicant-society by Municipal Council, Partur on 11.06.2014. The beneficiaries were allotted said 359 houses constructed by the applicant-society and there was no complaint from any of the beneficiaries. She submitted that as per clause 10 of the agreement applicant-society was under obligation to carry out repairs of the technical defects in the construction. She submitted that there is no complaint from any of the beneficiaries of the houses constructed by the applicant-society. Municipal Council, Partur did not settle the payment of houses constructed by the applicant-society and therefore, Special Civil Suit No. 23/2016 was filed in the Court of Civil Judge, Senior Division, Jalna for

recovery of amount of Rs. 32,97,768/-. According to her, FIR is therefore lodged with a view to give counter blast to the civil suit filed by the applicant-society. The allegation of incomplete work of tenements is in respect of Survey Nos. 297 and 249. The work of construction of tenements at those survey numbers was given to Gajanan Construction and Infra Pvt. Ltd. and not to the applicant-society. According to her no criminal offence is made out against the applicant-society. By relying on the additional affidavit filed by applicant-society she pointed out that five members committee under the Chairmanship of Collector and Engineers from MHADA has conducted re-inquiry into the allegations and submitted a report dated 01.11.2021. It is stated in the said report that applicant-society has completed work of 359 tenements and by the year 2014 all the tenements were handed over to the beneficiaries. It is further mentioned that on random inspection of 568 tenements, they were found complete and beneficiaries were using the same.

She has strongly relied on the decision of co-ordinate bench of this Court at Nagpur in Criminal Application (APL) No. 381 of 2014, wherein according to her in identical facts the prosecution lodged against the applicant-society by Municipal Council, Narkhed, Dist. Nagpur was quashed by this Court. Said

decision is confirmed by the Apex Court on 13.12.2021 by dismissing the Special Leave Petition filed by Municipal Council, Narkhed. By relying on *Delhi Race Club (1940) Limited and Others vs. State of Uttar Pradesh and Another*¹, *N. Raghavender vs. State of Andhra Pradesh, CBI*² and *State of Gujarat vs. Jaswantlal Nathala*³ she submitted that FIR against the applicant-society is liable to be quashed.

5. Applicant in Criminal Application No. 139 of 2023 is the head of Infrastructure of SGS India Private Limited a Third Party Inspection and Monitoring Agency Services (for short "TPIMA") appointed by MHADA vide agreement dated 06.01.2010 for the project of construction of 441 houses which were to be constructed by Accused No. 1 and 2.

6. Learned advocate for the applicant in Criminal Application No. 139 of 2023 submitted that he had entered into an agreement with MHADA for visiting and supervising the work of construction of Gharkuls. Pursuant to the agreement, three visits were conducted by the applicant and joint inspection reports were submitted to MHADA pointing out the

1 (2024) 10 SCC 690

2 (2021) 18 SCC 70

3 1967 SCC OnLine SC 58

deficiencies/shortcoming in the construction work. Therefore, it cannot be said that applicant is involved in the alleged offence as there was no entrustment of property with the applicant. Therefore, no offence is made out against the applicant. Continuation of prosecution against the applicant is therefore an abuse of process of law and Court and proceeding is therefore liable to be quashed and set aside.

7. Learned APP strenuously opposed the applications by submitting that award of contract is not in dispute. In the joint inspection carried out by the Municipal Council and MHADA it was revealed that sub standard material was used for construction and the work was not satisfactorily done. According to him, since the property i.e. Survey No. 297 and 299 and some private lands of the beneficiaries were given to the applicant and payment of construction was made to the applicant, there was entrustment of property to the applicant-Construction Company and by doing sub standard work, applicant has misappropriated the property and has committed criminal breach of trust. Since, TPIMA was having responsibility to supervise the construction work they are also involved in the misappropriation of the Government funds.

8. Learned advocate for Respondent No. 3-Municipal Council submits that genesis of the FIR is sub standard quality work done while constructing the tenements/Gharkuls. According to him, since all the accused were involved in the said process either as contractor or supervising agency, prima facie their involvement in the misappropriation is clear. There is sufficient material on record against the applicants for their prosecution. Filing of civil suit would not absolve applicant-Construction Company from criminal liability.

9. Heard learned advocates for the applicants, learned APP for State and learned advocate for Municipal Council at length. With their assistance, we have perused the criminal applications, documents filed on record, charge sheet, affidavits filed by the respective parties and the citations relied upon by the parties.

10. It is a matter of record that Crime No. 61/2014 dated 14th June, 2014 was registered with Narkhed Police Station, Dist. Nagpur for offences punishable under Sections 409, 420, 468, 471 r/w 34 of IPC against applicant-society and others wherein similar allegations were levelled against the applicant-society. It was alleged that applicant-society has not constructed the

tenements as per the specifications in the agreement and the material which was used by the applicant-society was of sub-standard quality. This Court at Nagpur has allowed the application filed by the applicant-society and quashed the FIR. Relevant observations are as follows:

“5. We have carefully considered the contents of the First Information Report and the other material produced on record by the applicants. The First Information Report accuses the applicant in Criminal Application No.381 of 2014 for having committed the offences punishable under Sections 420, 468 and 471 of the Indian Penal Code. Section 420 of the Indian Penal Code for ready reference, reads as under :

“ 420. Cheating and dishonestly inducing delivery of property- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

After carefully considering the definition of the cheating as provided under Section 415 and Section 420 of the Indian Penal Code, the dishonest intention at the inception of entering into the contract between the parties is the essential ingredient. From reading of the First Information Report, the allegations against the said applicants is to the effect that the applicant had constructed 611 tenements not as per the agreement entered into between the applicant and the non-applicant No.2 which is on page No.27 of the said application and has received an amount of

Rs.4,04,99,196/-. The applicant has placed on record the correspondence between the applicant and the non-applicant No.2. From the said correspondence, it appears that there was notice issued by the applicant to the non-applicant No.2 invoking arbitration clause and the application was also filed under Section 11 of the Arbitration and Conciliation Act, 1996 in the year 2012. From the correspondence it appears that the applicant was demanding remaining dues of his work which was completed as per the agreement. The impugned First Information Report came to be registered on 8th June 2014 which is after almost seven years from the date of execution of the agreement and after six years of the occupation of the tenements holders. During the course of hearing, we called upon the Advocates for the non- applicant Nos. 1 and 2 to ascertain whether there was any complaint made by the tenement holders about the quality of the construction or the material used by the applicant being of sub-standard nature.

We have perused the agreement at page 27 and in particular clause 11 of the said agreement. Clause 11 of the said agreement requires that the applicant should carry out repairs of the construction in case of the defects in the construction. The non-applicant Nos. 1 and 2 have not pointed out that such complaint was made with the applicant within period of six months from the date of completion of the construction.

6. Having considered the contents of the First Information Report against the applicants in Criminal Application No. 602 of 2014 and Criminal Application No. 598 of 2014 wherein there are accusations against the applicants that the applicants being Junior Engineer and Chief Officer, respectively have abetted the crime of the applicant in Criminal Application No. 381 of 2014. Having considered the said allegations in the First Information Report, we are satisfied that the

ingredients of the offences of Section 409 read with Sections 420, 468 and 471 of the Indian Penal Code are not made out against the said applicants. It is also pertinent to note that there is neither any departmental enquiry initiated against both the applicants nor there is any show cause notice issued to them.

7. *We have also gone through the contents of the First Information Report in the context of the allegations as regards the commission of the offences under Sections 468 and 471 of the Indian Penal Code. After having carefully considered the clauses in the First Information Report, we do not find any averments in the First Information Report against all three applicants which prima-facie make out case of fulfillment of the offences under Sections 468 and 471 of the Indian Penal Code.*

8. *We are satisfied that prima-facie the allegations in the First Information Report do not constitute averments alleged against all the three applicants. We, therefore, are satisfied that continuation of the proceedings against the applicants would amount to abuse of process of the Court. The present case is squarely covered by clause (1) of paragraph No.102 given in the judgment in the case of State of Haryana Vs. Bhajan Lal, reported in 1992 Supp(1) SCC 335.”*

11. Admittedly, in the FIR in question similar allegations are levelled against the applicant-society and therefore case of applicant-society is squarely covered by the above observations.

12. The Municipal Council, Narkhed has challenged the said decision by filing Special Leave Petition, which was

dismissed by the Apex Court on 13.12.2021.

13. Record indicates that applicant-society has completed construction of 359 tenements and has handed over the same to the Municipal Council, Partur. The beneficiaries are occupying the said tenements. There is no material on record to indicate that the beneficiaries have made any complaints about the quality of construction. It appears that agreement at page 20 and in particular clause 10 of the said agreement casts a duty on the applicant-society to carry out repairs/remove defects in the construction within six months. There is no material on record to show that complaints were made against the applicant-society during the period of six months from the date of handing over the tenements. Though, the tenements were handed over in the year 2014, the FIR is belatedly lodged after a period of six years. In absence of any material on record to show dishonest intention on the part of applicant-society at the initial stage and entrustment of an amount or valuable property to the applicant-society and misappropriation of it by the applicant-society in violation of legal contract which was made for construction of tenements and/or the applicant-society has dishonestly converted the entrusted property to its own use or disposed it of

in violation of any direction of law or contract, no offence can be said to be made out against the applicant-society.

14. In **N. Raghavender** (supra) it is held:

“45. Section 409 IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker was entrusted with the property which he is duly bound to account for and that he has committed criminal breach of trust. (See Sadhupati Nageswara Rao v. State of A.P., (2012) 8 SCC 547).

46. The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are sine qua non for making an offence punishable under Section 409 IPC. The expression “criminal breach of trust” is defined under Section 405 IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405 IPC, the following ingredients must be satisfied.

46.1. Entrusting any person with property or with any dominion over property.

46.2. That person has dishonestly misappropriated or converted that property to his own use.

46.3. Or that person is dishonestly using or disposing of that property or willfully suffering any other person

so to do in violation of any direction of law or a legal contract.

47. It ought to be noted that the crucial word used in Section 405 IPC is "dishonestly" and therefore, it pre-supposes the existence of mens rea. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is "misappropriates" which means improperly setting apart for one's uses and to the exclusion of the owner."

15. In ***Jaswantlal Nathalal*** (supra) it is held:

"8. The term "entrusted" found in Section 405 IPC governs not only the words "with the property" immediately following it but also the words "or with any dominion over the property" occurring thereafter-see Velji Raghvaji Patel v. State of Maharashtra [1965] 2 S.C.R. 429. Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust-see Jaswantrao Manilal Akhaney v. State of Bombay [1956] SCR 483, 498-500. The expression 'entrustment' carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property

so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an entrustment. It is true that the government had sold the cement in question to BSS solely for the purpose of being used in connection with the construction work referred to earlier. But that circumstance does not make the transaction in question anything other than a sale. After delivery of the cement, the government had neither any right nor dominion over it. If the purchaser or his representative had failed to comply with the requirements of any law relating to cement control, he should have been prosecuted for the same. But we are unable to hold that there was any breach of trust.”

16. In **Delhi Race Club** (supra) the Apex Court has held:

“47. Similarly, in CBI v. Duncans Agro Industries Ltd., Calcutta reported in (1996) 5 SCC 591 this Court held that the expression “entrusted with property” used in Section 405 of the IPC connotes that the property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or that the beneficial interest in or ownership thereof must be in the other person and the offender must hold such property in trust for such other person or for his benefit. The relevant observations read as under: -

“27. In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective parties as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression “entrusted with property” or “with any dominion over property” has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of

contract. The expression 'entrusted' appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'trust' in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee."

(Emphasis supplied)"

17. The case of the applicant-society is squarely covered by the aforesaid rulings.

18. There appears substance in the contention of the applicant-society that it is implicated in the present crime with a view to give counter blast to the civil suit filed by it.

19. So far as case of applicant in Criminal Application No. 139 of 2023 is concerned, being TPIMA it was not party to the contract of construction of tenements with Municipal Council. It was appointed by MHADA for supervising the construction work. Record indicates that on the instructions of MHADA three visits were made by the TPIMA and reports were submitted to MHADA pointing out deficiencies in the construction work. Therefore, there is absolutely no involvement of TPIMA in the alleged crime. In the FIR or in the charge sheet no ingredients of Section 409 and 420 of IPC are made out against the TPIMA. The applicant's case is also covered by the N. Raghavender (supra), Jaswantlal Nathalal (supra) and Delhi Race Club (supra).

20. For the aforesaid reasons since no ingredients of Section 409 and 420 of IPC are made out against the applicants, continuation of the prosecution against the applicants is an abuse of process of law and Court. Hence, the following order:

ORDER

- (i) Criminal Applications are allowed.
- (ii) Charge Sheet No. 153 of 2022 and proceedings of R.C.C. No. 298 of 2022 pending before learned Judicial Magistrate First Class, Partur, arising out of FIR No. 548 of 2020, registered with Partur Police Station, Taluka-

Partur, Dist. Jalna for offences punishable under Sections 409, 420 read with 34 of Indian Penal Code are quashed and set aside against applicants- Laxminarayan Jaynarayan Rathi and Punkaji Manikrao Kumbhare.

- (iii) In view of disposal of criminal applications, Criminal Application No. 4689 of 2024 stands disposed of.

(SANDIPKUMAR C. MORE, J.)

(NITIN B. SURYAWANSHI, J.)