IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4375 OF 2023

1) Harshada D/o Kailas Patil,
Age-32 years, Occu:Service,
R/o-Om Nageshwar Society,
Paskalwadi, Malwani,
Malad (West), Mumbai,

2) Amrendra Kumar Gajendra Prasad,
Age-34 years, Occu:Service,
R/o-Quarter No.DM/12(B), DVC Colony,
Bokaro Therman, State Jharkhand.

...APPLICANTS

VERSUS

1) The State of Maharashtra,
Through Police Inspector,
Police Station, Vedant Nagar,
Aurangabad,

2) Usha Ramdas Wadekar,
Age-30 years, Occu:Private Service,
Chhatrapati Nagar, Galli No.5,
Pisadevi Road, Harsul,
Taluka and District-Aurangabad.

...RESPONDENTS

...

Mr. Prashant M. Nagargoje Advocate for Applicants.
Mr. G.A. Kulkarni, A.P.P. for Respondent No.1.

...

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

DATE : 23rd JULY, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed for quashing the Charge-sheet i.e. proceedings in R.C.C. No. 118 of 2023, pending before the learned Judicial Magistrate First Class, (9th Court), Aurangabad, arising out of the First Information Report (for short "the FIR") vide Crime No.5 of 2022, registered with Harsul Police Station, Aurangabad, on 10th January 2022, for the offence punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Nagargoje for the applicants and learned APP Mr. Kulkarni for respondent No.1.

3. Learned APP places on record the Daily Status Report from Ecourts Services, from the Court of 9th Judicial Magistrate First Class, Aurangabad where the matter is pending, and submits that on behalf of the accused, application for discharge has been filed and still the present application is pressed. Thus, according to the learned APP, both the applications are for the same purpose and therefore the objection has been raised. We would say that the purpose is distinct though the material that is

required to be considered is the same. It appears that the discharge application has been filed on 7th February 2024 and the Daily Status Report does not show which accused has filed said application, but the present Application is pending since 2023. Therefore, the present Application, filed prior in time, can go ahead.

4. Learned Advocate for the applicants has taken us through the entire charge-sheet and submits that the FIR has been lodged by respondent No.2 on the basis of incomplete facts. It is based on the contract as such and informant has not performed her part of the contract and had not claimed back her amount within stipulated time and therefore, it appears that it was not given by the company. He submits that the informant has stated that applicant No.1 is known to her since last four years and applicant No.1 is serving in the company at Mumbai. Applicant No.1 had given phone call to the informant on 14th May 2021, stating that she is doing online business in cost reduction and digital disruption and therefore, she asked whether the informant also wants to do the same business. When the informant asked her about the information regarding that business, applicant No.1 gave the same. Then for registration

and business license, informant gave an amount of Rs.2,00,000/-, which was the bank transfer. Applicant No.1 accepts the said transaction but it is the say of application No.1 that she has given the entire narration, how the business is to be carried out and what is exactly required from the informant. The informant then states that after two days of money transfer, applicant No.1 had given a link for online meeting and told informant that she should attend the meeting and get the training completed. Thereafter, there was 7 days training that was given by applicant No.2, which was completed by the informant, wherein informant states that she came to know about the name of the company as Qnet Vihan Direct Selling India Private Limited. She also searched online about the said company, wherein she found that the company is in existence. Thereafter, informant had asked her two friends, namely, Shubham and Snehal, to join the business. After some days applicant No.1 sent the bond for signature and then the informant and her friends raised suspicion. When they went through the contents, they realized that they are not going to get any return but it is a fraud. Informant asked her friends to get back their amount as it was within 7 days of their payment. The company, as per the contract, returned the said amount within two months. However, though demanded, the amount has not been returned to the informant. Then informant says that since it is a fraud, she lodged the FIR.

5. Learned Advocate for the applicants submitted that the documents have been collected, which would show that how the transactions went. Even the informant has taken training and now she states that it was a fraud. As per the rules of the company, the amount could have been refunded upon cancellation, within 7 days from the date of purchase of the product. The informant has not demanded her money within the said period. Now, she cannot say that it was a fraud. Further, the offence under Section 406 and 420 of the Indian Penal Code will not go together and therefore, he relies on the decision in ***Delhi Race Club (1940) Limited and others vs. State of Uttar Pradesh and another, (2024) 10 SCC 690***, wherein, in Paragraph Nos. 40, 41 and 42, it has been observed thus:-

> "40. 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.

41. 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.

42. 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."

6. Learned Advocate for the applicants further submitted that the statements of said Shubham and Snehal, friends of the informant, have also been recorded, who accepts that they got their amount back after about two months. Under the said

circumstance, it would be unjust to ask the applicants to face the trial.

7. Per contra, learned APP strongly opposed the Application and submitted that the entire charge-sheet is before the Court, which would show that no document was forwarded by applicant No.1 to the informant prior to the training. Applicant No.1 accepted the amount which was given in faith by the informant and then she asked the informant to attend the training. Later on the bond was sent for signature. It would then be revealed in the trial, as to when exactly the documents were sent i.e. bond was sent for signature. Major transaction appears to be through e-mail. Even that Qnet company is said to be e-commerce company. By asking the informant to part with the amount and thereafter sending the mail that applicant No.1 is not responsible and then applicant No.2 gets involved just to show that something is done towards the business, appears to be an act of fraud. As evidence is required, this is not a fit case where the Court should exercise its powers for quashing the proceedings.

8. Certainly, we are bound by the ratio laid down in ***Delhi Race Club (1940) Limited and others vs. State of Uttar Pradesh***

and another, (supra), however, how that is applicable or whether it is not applicable, would depend upon the facts in the present case. The contents of the FIR are already reproduced, therefore, we do not want to mention the same again. It appears that when applicant No.1 has given the representation, it was in respect of online business as she has stated, but then the transaction appears to be regarding purchase of vacation package product from the global portal of Qnet company. Since the applicants are relying on some mail acknowledgement stated to be given by the informant on 30th May 2021 to applicant No.1's mail, there has to be a proof. The said evidence can only be proved at the time of trial. Now, the question is, as per the company rules or business idea, as to what the informant was supposed to do to earn, is not coming forward. Copies of some rules have been produced on record, however, those are not forming part of the charge-sheet. The fact is supported that the informant had paid an amount of Rs.2,00,000/- to applicant No.1 and in respect of the said transaction itself, applicant No.2 appears to have given training to the informant. Now, the thing is that the amounts of Shubham and Snehal have been returned by the company but then it is now stated that since the amount has been claimed by them within 7 days, the transaction has been cancelled.

However, if we consider the statements of Shubham and Snehal, then they have also expressed doubts over the transaction of the company. Therefore, the matter requires proof and evidence. The rules or terms of contract are not forming part of the charge-sheet and therefore, we do not find this to be a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure.

9. The Criminal Application stands rejected.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/AUG25