

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 3013 OF 2024

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| 1. Mr. Shammee Swaran Salaria) | |
| @ Shami Salariya) | |
| Age: 42 years, Occupation: Business) | |
| R/at: Sandora Bungalow) | |
| A.B. Nair Road, Near Juhu Post Office) | |
| Juhu, Mumbai-400 049.) | |
| | |
| 2. Mr. Bachan Nidhan Salariya) | |
| @ Bachan Salariya) | |
| Age: 57 years, Occupation: Business) | |
| R/at: Sandora Bungalow) | |
| A.B. Nair Road, Near Juhu Post Office) | |
| Juhu, Mumbai-400 049.) | ...Petitioners |

Versus

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|-----------------------------------|-----------------|
| 1. The State of Maharashtra) | |
| (At the instance of) | |
| D. N. Nagar Police Station).) | |
| | |
| 2. Ajay Jagannathji Ganveer) | |
| Age: 53 years,) | |
| Occupation: Enforcement Officer) | |
| R/at: 401, Sector-12,) | |
| Millennium Orchid,) | |
| Kharghar Navi Mumbai-410210.) | ... Respondents |

Mr. Abhishek Kulkarni along with Mr. Sagar Wakale and Mr. R.S. Pere
for the Petitioners.

Mr. V. B. Konde Deshmukh, Addl. P. P. For the Respondent No.1-

State.

Mrs. Shehnaz V. Bharucha for the Respondent No.2.

Mr. Santosh Choudhari, P.I., D. N. Nagar Police Station, Mumbai.

Mr. Vaibhav Khade, P.S.I, D. N. Nagar Police Station, Mumbai.

CORAM : REVATI MOHITE DERE &
SANDESH D. PATIL, JJ.

RESERVED ON : 10th DECEMBER, 2025.

PRONOUNCED ON : 17th DECEMBER, 2025.

Judgement (Per Sandesh D. Patil, J) :

1. Heard learned Counsel for the parties.
2. **Rule.** Rule is made returnable forthwith with the consent of the parties and the Writ Petition is taken up for final disposal.
3. Mr. V. B. Konde Deshmukh, learned Addl. P. P. for the Respondent No.1-State, waives notice on behalf of Respondent No.1-State. Mrs. Shehnaz V. Bharucha, learned Counsel appearing for the Respondent No.2 waives notice on behalf of Respondent No.2

4. By the present Writ Petition, the Petitioners are seeking quashing of the F.I.R. bearing C. R. No.0553 of 2024 dated 04/06/2024 registered at the instance of the Respondent No.2 against the Petitioners with D. N. Nagar Police Station, Mumbai City and proceedings in CC No.3318/PW/2025 pending before learned JMFC Andheri, Mumbai for the offences punishable under Sections 406, 409 read with Section 34 of the Indian Penal Code (IPC).

5. The case of the prosecution is that, the Complainant who was working as a Provident Fund Inspector in Provident Fund Department noticed that the Petitioners had not deposited the amount of Provident Fund of more than 20 workers in their company in the account of the Government. He further noticed that the Petitioners had deducted the Provident Fund from the salary of the employees amounting to Rs.23,60,241/-. The Complainant therefore, filed the complaint against the Petitioners

and its Directors under the provision of Sections 406, 409 read with Section 34 of IPC bearing C. R. No. 0533 of 2024 with D.N. Nagar, Police Station on 04/06/2024.

6. The Petitioners have filed the present Petition for quashing of the aforesaid C.R. It is the case of the Petitioners that prior to registration of the F.I.R., Complainant had paid substantial amount of the PPF deducted by them to the Petitioners, in the account of the Government. The learned Counsel for the Petitioners contended that although some amount was paid after three days from filing of the F.I.R. however, that was immediately paid to the Government and that on 07/06/2024, the office of the Provident Fund had granted 'No Due Certificate' to the Petitioners vide letter dated 07.06.2024 stating, that the entire amount has been paid by the Petitioners. The learned Counsel for the Petitioners contended that even on plain reading of the said F.I.R., no offence under Section 406 or 409 of the Indian Penal Code is made out. The learned Counsel for the Petitioners

contended that in any event since the entire amount was already paid there is no point in asking the Petitioners to face the trial. Learned Counsel for the Petitioners further stated, that there is no provision for compounding of the said offences and therefore, Petitioners have filed the present Writ Petition. He lastly stated that there was no intention on the part of the Petitioners to commit any offence and that non-payment of the amount to the Provident Fund was not intentional or deliberate but due to the reasons mentioned in details of the Petition.

7. Ms. Shehnaz Bharucha, learned Counsel for the Respondent No. 2 has filed an affidavit on behalf of the Respondent No.2. She stated, that the Petitioners are covered under the Employees Provident Funds and Miscellaneous Provisions Act, 1952. The Petitioners had not deposited the amount of the Provident Fund hence, on 31.05.2024 the Area Enforcement Officer visited the establishment of the Petitioners for verification of the documents. After inspection of the documents, the Area Enforcement Officer

filed a report dated 05.06.2024 and accordingly, the complaint was filed under Sections 406, 409 read with Section 34 of the Indian Penal Code. She however, fairly admitted that much of the payment was paid prior to filing of the F.I.R. and some payment which was also made within three days from the filing of the F.I.R. She ultimately stated that appropriate orders may be passed in the light of the aforesaid submissions.

8. Admittedly, the F.I.R. was filed on 04.06.2024. The amount which is due as mentioned in the F.I.R. is Rs.23,60,241/-. The Petitioners have paid an amount of Rs.6,12,412/-. The payment was made on 01.06.2024, 04.06.2024 and on 07.06.2024 'No due Certificate' was issued by the office of the Respondent No.2 to the Petitioners. Taking into consideration the aforesaid facts and circumstances, it is clear that since the amount was paid prior to and on the date of lodging of the F.I.R., and further since it was also paid by 07.06.2024, no offence can be said to have been committed under Sections 406 and 409 of the Indian Penal Code

precisely because there was no intention to commit criminal breach of trust or as contemplated under Section 406 of 409 of the Indian Penal Code. We are of the opinion that the offence registered for non-payment of Provident Fund is committed due to various reasons including miscalculation of the amount, inadvertence in not paying the said amount, sometimes due to clerical mistake, etc. In any event, in case, where the amount is paid to the Provident Fund Account resorting to such proceeding would be futile. The already docket lodged Courts would be burdened by such futile litigation. We therefore, pass the following order

ORDER

(i) The F.I.R. vide C. R. No.0553 of 2024 dated 04/06/2024 registered at the instance of the Respondent No.2 against the Petitioners with D. N. Nagar Police Station, Mumbai for the offences punishable under Sections 406, 409 readwith Section 34 of the Indian Penal Code and CC

No.3318/PW/2025 pending before the learned JMFC, Andheri, Mumbai is hereby quashed and set aside.

(ii) There shall be no order as to costs.

(iii) **Rule** is made absolute on the aforesaid terms.

9. It is however made clear that, although we have quashed the F.I.R., the Respondents are at liberty to take appropriate action, for recovery of their dues or penalty for late payment, if so permissible as against the Petitioners.

10. All concerned parties to act on an authenticated copy of this order.

(SANDESH D. PATIL, J.)

(REVATI MOHITE DERE, J.)