



Judgment

489 apl903.23

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO.903 OF 2023

Santosh Nivrutti Kajale,
aged about 35 years,
occupation Vaidya,
r/o Gavha, taluka Manora,
district Washim. **Applicant.**

:: V E R S U S ::

1. State of Maharashtra,
through PSO Police Station
Dhanaj, taluka Karanja, district
Washim.

2. Sunil s/o Ramdas Khadse,
aged about 40 years,
occupation agricultural labour,
r/o Donad Bk., taluka
Karanja, district Washim. **Non-applicants.**

Shri Ajay Tote, Counsel for the Applicant.
Shri N.B.Jawade, Additional Public Prosecutor for NA
No.1/State.
None appeared for NA No.2.

**CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.**

CLOSED ON : 08/10/2025
PRONOUNCED ON : 14/10/2025

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JUDGMENT (Per : Urmila Joshi-Phalke)

1. Heard learned counsel Shri Ajay Tote for the applicant and learned Additional Public Prosecutor Shri N.B.Jawade for non-applicant No.1/State. None appeared for non-applicant No.2 though served.

2. The present application is filed by the applicant for quashing of FIR in connection with Crime No.280/2022 registered under Section 406 of the IPC.

3. Brief facts of the case are as under:

Non-applicant No.2 (the complainant) has lodged a complaint with the non-applicant police station stating that he has purchased brand new motorcycle bearing registration NO.MH-27/DJ/2649 on 28.10.2022 worth of Rs.79,067/-. For purchasing the said vehicle, he has paid Rs.22,000/- as down payment and availed bank loan for remaining payment. The complainant was

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acquainted with the applicant as he used to come to his house for treating his mother. On 9.11.2022, the applicant requested the complainant to give the motorcycle and he assured that he would return it on the next day. The complainant handed over the said motorcycle, but he has not returned the same and avoided to return the motorcycle by giving frivolous reasons. On the basis of the said report, the police registered the crime.

4. During investigation, it revealed that the applicant has returned the motorcycle by parking at some other place i.e. at the place of one Mohd.Wasik.

5. The present application is filed on the ground that the applicant has already returned the motorcycle and, therefore, no offence is made out as far as Section 406 of the IPC is concerned. The requirements of Section 406 of the IPC are not made out. It is further

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contended that there was entrustment of the property to the applicant, but as he has already returned the motorcycle, no offence is made out and, therefore, power under Section 482 requires to be exercised.

6. Learned Additional Public Prosecutor for the State strongly opposed the contentions and submitted that the motorcycle is not returned to the complainant, but it was parked at the place of Mohd.Wasik, which shows the intention of the applicant and, therefore, the application deserves to be rejected.

7. As the complainant and the applicant were acquainted with each other, the applicant asked for his motorcycle and the complainant handed over the motorcycle. For 4-5 day, the applicant has not returned the motorcycle and after some days, he has returned the same by parking it at the place of Mohd.Wasik and,

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therefore, the offence is registered under Section 406 of the IPC.

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. 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. 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

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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 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

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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.

9. The aforesaid position of law makes it clear that there should be some entrustment of property to

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the accused wherein the ownership is not transferred to the accused.

10. In the light of the legal position, if the facts of the present case are concerned, admittedly, the motorcycle was handed over by the complainant to the applicant out of acquaintance. However, the statement of witness Mohd.Wasik shows that he has returned the said property though he has parked it at some other place.

11. 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 person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which

such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

12. In our view, on a plain reading of the FIR and various statements recorded during the investigation, we may say that view to clear a serious misconception of law in the mind of the police that if it is a case of criminal breach of trust as defined under Section 405 of IPC, as far as dishonest intention is concerned, there is no material to show that the applicant has attempted to covert the said property for his own use or has made an attempt to dispose of that property causing/suffering the complainant and, therefore, offence under Section 405 is not made out.

13. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a

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civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a *mens rea*, gives rise to a criminal prosecution as well.

14. As far as *mens rea* of the applicant is concerned, there is no material against the applicant.

15. In view of the above proposition of law, no *prima facie* offence is made out against the applicant and, therefore, we are inclined to exercise the jurisdiction in favour of the applicant to quash the proceeding.

16. In this view of the matter, we proceed to pass the following order:

ORDER

(1) The Criminal Application is **Allowed**.

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(2) FIR No.280/2022 registered under Section 406 of the IPC and the consequent proceeding arising out of the same Chargesheet bearing No.21/2023 having RCC No.148/2023 are hereby quashed and set aside.

Application stands **disposed of** in the aforesaid terms.

(NANDESH S.DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede, PS !!

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