



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO.1242 OF 2024

1. Jayesh Kailash Attarkar
Aged about 23 years,
Occu. Private Job
2. Saurabh Kailash Attarkar
Aged about 25 years,
Occu. Private Job
Both 1 & 2 R/o. Kasturi Niwas,
Niwara Colony no.1, Madhav
Nagar, Goeakshan Road, Akola,
Tq & Dist Akola

... APPLICANTS

...VERSUS...

1. State of Maharashtra,
Through Police Station officer
Police Station Khadan, Tq &
Dist Akola.
2. Ashok Jitendrakumar Morya
Aged about 55 years,
Occ:Business, R/o-Balaji
Kirana, Santosh Nagar, Akola,
Tq & Dist Akola

...NON-APPLICANTS

Shri Mandar Deshpande, Advocate h/f Shri K.H. Anandani, Advocate for applicants
Shri A.G. Mate, APP for non-applicant No.1/State

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

DATED : 16.12.2025

JUDGMENT (PER : URMILA JOSHI-PHALKE, J.)

Heard. **Admit.** Heard finally with the consent of learned Counsel for both the parties.

2. Present application is preferred by the applicants for quashing of the First Information Report in connection with Crime No. 0784/2022, registered under Section 403, 406, and 420 read with Section 34 of Indian Penal Code, as also, consequent charge-sheet and the proceeding arising out of the same bearing RCC No. 425/2025, pending before the 2nd Judicial Magistrate First Class, Akola.

3. The crime is registered on the basis of a report lodged by the informant, namely, Ashok Jitendrakumar Morya, on an allegation that the present applicants have obtained money from him time to time on the pretext of repairing of his vehicle and thereafter replacing the parts of the vehicle, and subsequently, the informant came to know that no such parts are replaced and the amount of the informant was also not returned back to him. On the basis of

the said report, the police have registered the crime against the present applicants. As per the allegations, the informant was cheated by the present applicants by obtaining the amount of Rs.2,25,000/-.

4. After registration of the crime, the investigation was carried out. During the investigation, the statements of the various witnesses were recorded the account statements of and the present applicants as well as the informant was also collected and after completion of the investigation charge-sheet was filed against the present applicants.

5. Learned Counsel for the applicants has withdrawn the application as far as applicant No.1 is concerned. However, he submitted that as far as applicant No.2 is concerned, absolutely there is no material to connect him with the alleged offence. He submitted that there has to be an intention since inception to make out the offence punishable under Sections 420, 403, and 406 of the Indian Penal Code. He further submitted that the offence under 420 and 406 will not go together. He also invited our attention towards

the various statements of the witnesses and submitted that, except the statement that the applicant No.2 has assisted other accused in the commission of the crime, there is no specific act attributed to the present applicant No.2. In view of that, no *prima facie* case is made out against the applicant No.2, and hence the application to the extent of the applicant No.2, Saurabh Kailash Attarkar, deserves to be allowed.

6. Per contra, learned Additional Public Prosecutors strongly opposed the same and submitted that, considering the statements of the various witnesses, which are recorded during the investigation which show that the applicants, in connivance with each other, cheated the informant by obtaining money on the pretext of repairing the vehicle, as well as replacing the spare parts of the vehicle and thereby committed an offence. The applicant No.2 is also involved as the offence is committed in furtherance of the common intention. In view of that, the application deserves to be rejected.

7. On hearing both the sides and on perusal of the entire

investigation papers, as the application is already withdrawn for the applicant No. 1, we have to consider only the allegation as to the applicant No.2 is concerned. On perusal of the statements, it reveals that, only allegation against the applicant No.2 is that he has assisted the other accused in the commission of the crime. On perusal of the statement of the informant, it also reveals that only the allegation levelled by him, which is omnibus in nature, to the extent that the applicant Saurabh Attarkar has also assisted the other co-accused in the commission of the crime. For Application of Section 403 dishonest intention is the ingredient which appears to be absent from the allegations levelled against the applicant No.2, therefore, Section 403 will not attract against the applicant No.2. Section 406 deals with the criminal breach of trust and punishment for criminal breach of trust. The definition of criminal breach of trust is given under Section 405 which reads as whoever being in any manner entrusted with the property or with any dominion owned property dishonestly, misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, expressed or

replied, which he has made touching the discharge of such trust, or willfully suffers any other person to do commits criminal breach of trust.

8. Thus, for attracting the offence punishable under Section 406 of the Indian Penal Code, the prosecution has to establish that the applicant No.2 was having any dominion over property or the property was handed over to him and he has misappropriated or it converted it for his own use. This allegation itself are not made out against the applicant No.2. Mere breach of any contract does not constitute an offence under Section 405. Here, there is no allegation against the applicant No. 2 as to the breach of the agreement or the breach of the contract. The definition of cheating is also given under Section 415 of the Indian Penal Code, which also states that whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that such person shall retain such property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived. Here there is no material to show that any property was delivered

to the applicant No. 2 to hold a person guilty of cheating as defined under Section 415 of the Indian Penal Code, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. In other words, Section 415 of the Indian Penal Code, which defines cheating, requires deception of any person. The said ingredient itself is absent in the present case as far as the applicant No.2 is concerned, in view of that, the application deserves to be allowed to the extent of applicant No.2. Accordingly, we proceed to pass following order :

ORDER

- i) Application is allowed.
- ii) The First Information Report in connection with Crime No. 0784/2022, registered under Section 403, 406, and 420 read with Section 34 of Indian Penal Code, as also, consequent charge-sheet and the proceeding arising out of the same bearing RCC No. 425/2025, pending before the 2nd Judicial Magistrate First Class, Akola, is hereby quashed and set aside to the extent of the applicant No. 2 – Saurabh Kailash Attarkar.

iii) The application of the applicant No. 1 is disposed of as withdrawn.

iv) The Trial Courts shall not be influenced by the observations made by this Court while deciding the application of the applicant No.2.

9. The application is disposed of

(NANDESH S. DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

Jayashree..