



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO.1392 OF 2024

1. Ketan s/o Ganesh Goenka
Age: 31 Years, Occ :Business
R/o: Plot No. 29/30, Wathoda
Road, Near Swami Narayan Enclave,
Sadashiv Nagar, Bhandewdi, Nagpur
2. Ganesh s/o Shivshankar Goenka
Age: 52 Years, Occ :Business
R/o: Plot No. 30, Wathoda
Road, Near Swami Narayan Enclave,
Sadashiv Nagar, Bhandewdi, Nagpur
(Amendment carried out as per Hon'ble
Courts Order dated 16.09.2025, 03.10.2025)

... APPLICANTS

...VERSUS...

1. State of Maharashtra
through P.S.O.P.S. CHIKHLI,
Buldana.
2. Rajendra Babulal Agrawal
Aged about 60 yrs, Occ: Business
R/o: Anand Nagar, Chikhli,
Buldhana

...NON-APPLICANTS

Shri S.S. Sohoni, Advocate for applicants
Shri M.J. Khan, APP for non-applicant No.1/State

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

RESERVED ON : **26.11.2025**
PRONOUNCED ON : **08.12.2025**

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

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

2. The applicant has filed the present application for quashing and setting aside the First Information Report No. 0531 of 2024, dated 15.07.2024, and consequent charge-sheet bearing no. 220/2024, for offences punishable under Sections 420 read with Section 34 of the Indian Penal Code, 1860, as also, Regular Criminal Case No. 324/2025, pending before the Court of Civil Judge, Junior Division and Judicial Magistrate First Class, Chikhli, Dist. Buldhana.

3. In accordance with the First Information Report, the non-applicant No. 2 is the proprietor of one Balaji Agro Industries, a proprietary engaged in the business of purchase and sale of agricultural produce. He was in regular business with one

commission agency, Arihant Canvassing, which routinely procured orders for him.

4. On 27.12.2023, Parag Shah (Accused No. 4), a partner at Arihant Canvassing, informed non-applicant No. 2 that applicant No. 2, namely, Ganesh Shivshankar Goenka, owner of Goenka Proteins Pvt. Ltd., was in requirement of soyabean and thus an order for 300 quintals of soyabean was confirmed at the rate of Rs.5,010 per quintal, with an assurance that payment would be made within eight days of delivery. On the same day, Navalchand Jain (Accused No. 3), another partner at Arihant Canvassing, issued Contract Note No. 511 to non-applicant No. 2 in the name of Goenka Proteins Pvt. Ltd., confirming the order.

5. Pursuant to the contract, non-applicant No. 2 dispatched 304.10 quintals of soyabean valued at Rs.15,99,718/- on 30.12.2023 through Bharat Transport. The goods were received by Goenka Proteins Pvt. Ltd. on 05.01.2024. Including GST of Rs.3,04,309/-, the total sale consideration was fixed at Rs.19,04,027/-.

6. It is the allegation that the due payment was not made within 8 days of delivery, as assured by the applicants. On 09.03.2024, the son of non-applicant No.2, accompanied by Navalchand Jain (Accused No. 3), met the applicants and demanded payment of the amount due. The applicants stated that they were unable to pay at that time. When asked to return the soybean, they admitted that the goods had already been sold.

7. Based on these allegations, the non-applicant No. 2 asserts that the accused persons, namely Ganesh Shivshankar Goenka(applicant no. 2/accused no. 1), Ketan Goenka(applicant no. 1/accused no. 2), and commission agents Navalchand Jain(accused no. 3) and Parag Shah (accused no. 4), obtained 304.10 quintals of soyabean under the contract, failed to make payment, disposed of the goods, and thereby dishonestly misappropriated the non-applicant no. 2's property and cheated him of Rs.19,04,027/-.

8. Aggrieved by the aforesaid acts, non-applicant No. 2 lodged a First Information Report at Police Station Chikhli, District Buldhana.

It is this First Information Report that is under challenge in the instant application.

9. We have heard Mr. S.S. Sohoni, learned Counsel for the applicants, and Mr. M. J. Khan, learned Additional Public Prosecutor for the non-applicant No. 1/State.

10. The learned Counsel for the applicants opposes the averments made in the First Information Report. It is submitted that, on a bare perusal of the First Information Report, it becomes evident that the dispute is purely civil in nature, arising out of a commercial transaction. A mere breach of business terms or failure to honour contractual obligations does not, by itself, constitute the offences as alleged in the First Information Report.

11. It is further submitted that the applicants have already made part payment towards the goods delivered, as on 11.03.2024, and documents reflecting such payments have been placed on record.

12. It is also contended that the applicants had been regularly conducting business with non-applicant No. 2 from 09.11.2023 till

05.01.2024. The total turnover between the parties during this period amounts to Rs.1,31,94,737/-. The last payment to non-applicant No. 2 was made on 11.03.2024. Out of the total transactions, the outstanding amount is Rs.18,07,847/-. This clearly demonstrates that they have made proper and timely payments in the past and that there was no intention of deception from the beginning. Therefore, the essential ingredients of Section 420 of the Indian Penal Code are not attracted.

13. Lastly, it is submitted that non-payment or underpayment of the price of goods by itself does not amount to commission of an offence of cheating or dishonest inducement of delivery of property. The dispute is essentially civil in nature, and the appropriate remedy for non-applicant No. 2 is to seek recovery of the alleged outstanding amount through civil proceedings rather than criminal prosecution.

14. In support of the claims advanced by the learned Counsel for the applicants, he has placed reliance on cases cited as follows:

- 1. Lalit Chaturvedi and Others vs. State of Uttar Pradesh and Another (2024 SCC OnLine SC 171)*
- 2. Rashmi Jain vs. State of Uttar Pradesh[(2014) 13 SCC 553]*
- 3. Anil Mahajan vs. Bhor Industries Ltd. and another [(2005) 10 SCC 228]*
- 4. Vir Prakash Sharma vs. Anil Kumar Agarwal and another [(2007) 7 SCC 373]*
- 5. Naresh Kumar and another vs. The State of Karnataka, 2024 SCC OnLine SC 268.*

15. Per contra, the learned Additional Public Prosecutor has vehemently opposed the submissions of the learned Counsel for the applicants. It is submitted that the Investigating Officer has collected the contract note, challans, and other relevant documents and has also recorded the statements of material witnesses. The applicants accepted the delivery of goods on 05.01.2024, but did not pay the price to the non-applicant No. 2 on the due date as assured. The amount continued to remain unpaid as on the date of lodging of the First Information Report.

16. According to the learned Additional Public Prosecutor, these circumstances *prima facie* constitute the offence of cheating and dishonest inducement of property. The application is devoid of any merit and is liable to be rejected.

17. In the backdrop of these submissions, we have perused the First Information Report and the consequent charge sheet. As can be seen from a meaningful reading of the First Information Report and the charge sheet, it can be said that the dispute pertains to the non-payment of money as agreed for the purchase of soyabean. There is no mention of any dishonest intention from the inception so as to attract offence punishable under Section 420 of the Indian Penal Code. It is relevant to point out that offence punishable under Section 409 of the Indian Penal Code has been dropped at the time of filing of charge-sheet.

18. It seems that this is the only civil dispute which has been given a colour of criminality by the non-applicant No.2. As has been rightly relied by learned Counsel for the applicant, in the case of ***Lalit Chaturvedi*** (supra), in paragraph No. 5 the Hon'ble Apex

Court has stated as under:

“5. This Court, in a number of judgments, has pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms; and a criminal offence under Sections 420 and 406 of the IPC. Repeated judgments of this Court, however, are somehow overlooked, and are not being applied and enforced. We will be referring to these judgments. The impugned judgment dismisses the application filed by the appellants under Section 482 of the Cr.P.C. on the ground of delay/laches and also the factum that the chargesheet had been filed on 12.12.2019. This ground and reason is also not valid.”

19. Furthermore, in the judgment of ***Rashmi Jain*** (supra) by referring to earlier judgments, this Court has observed that every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a material act or fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the persons wronged may seek his redress for damages in a civil court, but a breach of trust with *mens rea* gives rise to a criminal prosecution as well.

20. In ***G. Jain Sagar Suri Vs. State of U.P.***, 2000(2) SCC 636, the

Hon'ble Apex Court observed that jurisdiction under 482 of the Criminal Procedure Code has to be exercised with great care and not superficially. It is to be seen if a matter which is essentially of a civil nature has been given a colour of criminal offence. Criminal proceedings are not a shortcut to other remedies available in law. Before issuing a process, a Criminal Court has to exercise a great deal of caution since for the accused it is a serious matter. Thus, by relying on the celebrated judgment of Bhajanlal, the Hon'ble Apex Court quashed the proceeding in question. Thereafter again in judgment of **Anil Mahajan** (supra), this Court reiterated the above said principle and observed as under :

“8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs 3,05,39,086 out of the total amount of Rs 3,38,62,860 was paid leaving balance of Rs 33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is

mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as abovenoticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question.”

21. The same principal was reiterated in ***Vir Prakash Sharma*** (supra) :

22. We have already taken a view in Criminal Application (APL) No. 633/2024, relying on various judgments like ***Delhi Race Club(1940) Limited and others Vs. State of Uttar Pradesh and another, (2024) 10 SCC 690, Sharif Ahmed and another Vs. State of Uttar Pradesh and another 2020 Online SC 726*** and the judgment of Hon’ble Apex Court in the matter of ***Rikhab Birani and another Vs. State of Uttar Pradesh and another, arising out of SLP (Cri.) 8592/2024***, the Hon’ble Supreme Court, while explaining a fine distinction between mere breach of contract and the offence of criminal breach of trust and cheating, has stated as under:

“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.

43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.

44. At the most, the Court of the Additional Chief Judicial Magistrate could have issued process for the offence punishable under Section 420 of the IPC i.e. cheating but in any circumstances no case of criminal breach of trust is made out. The reason being that indisputably there is no entrustment of any property in the case at hand. It is not even the case of the complainant that any property was lawfully entrusted to the appellants and that the same has been dishonestly misappropriated. The case of the complainant is plain and simple. He says that the price of the goods sold by him has not been paid. Once there is a sale, Section 406 of the IPC goes out of picture. According to the complainant, the invoices raised by him were not cleared. No case worth the name of cheating is also made out."

23. It is thus clear that there is a difference between criminal breach of trust and cheating as contemplated under the Indian Penal Code. Only when there is entrustment of any property and the same being dishonestly misappropriated, the offence of criminal breach of trust under Section 406 of the Indian Penal Code comes into picture. Thus, for cheating, criminal intention is necessary, at the time of making of false representation, that is, since inception.

24. The controversy if appreciated in the light of the settled law in that regard reproduced supra, it is seen that part payment of

money agreed is already made and now the dispute relates to the balance payment. Thus, there is no intention to deceive, leave apart any such from the inception of the transaction. The transaction is purely of commercial nature.

25. We are of the considered opinion that the dispute is essentially of a civil nature and has been intentionally given a colour of criminality. We are therefore of the opinion that this is a fit case to exercise our inherent powers under Section 482 of the Criminal Procedure Code and quash the proceeding in question. We therefore proceed to pass the following order:

ORDER

- i) The application is allowed.
- ii) The First Information Report No. 0531 of 2024, dated 15.07.2024, and consequent charge-sheet, for offences punishable under Sections 420 read with Section 34 of the Indian Penal Code, 1860, as also, Regular Criminal Case No. 324/2025, pending before the Court of Civil Judge, Junior Division and Judicial Magistrate

First Class, Chikhli, Dist. Buldhana, is quashed and set aside to the extent of the applicant No.1 – Ketan S/o Ganesh Goenka, because applicant No. 2, Ganesh Shivshankar Goenka, is reported to be dead on 02.05.2025.

26. The application is allowed to the extent of applicant No.1 and disposed of as such.

(NANDESH S. DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

Jayashree..