IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Revision Application No. 4 of 2008

Jayesh Shah
doing business in the name and
style of J. Manubhai & Co. and
J. M. International, having his
office at 104, Prashant Chambers,
74/78, Bhandari Street,
Mumbai – 400 003. … Applicant

Versus

1. Milan A Kusumgar – Partner
M/s Generation Next,
307, Pragati Industrial Estate,
316, N M Joshi Marg,
Mumbai – 400 013.

2. Ms Meghna M Kusumgar – Partner
M/s Generation Next,
307, Pragati Industrial Estate,
316, N M Joshi Marg,
Mumbai – 400 013.

3. M/s Generation Next – Partnership
Company
307, Pragati Industrial Estate,
316, N M Joshi Marg,
Mumbai – 400 013.

4. State of Maharashtra …Respondents

MAMTA AMAR KALE
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None present for the applicant and respondents No.1 to 3.
Ms Anagha A Deshmukh, APP, for the Respondent / State.

Coram: R.N. Laddha, J.
Date: 17 January 2026.

P.C.:

. The present revision application assails the order dated 3 August 2007 passed by the Additional Sessions Judge, Sewree, Mumbai, whereby the order dated 26 March 2004 passed by the learned Additional Metropolitan Magistrate, 2nd Court, Mazgaon, Mumbai, in CC No.2/I&R/2004(71/M/2000), issuing process for the offence punishable under Sections 420 read with 34 of the Indian Penal Code, came to be quashed and set aside.

2. Today, when the matter is called out, none present for the applicant and respondents No.1 to 3. With the able assistance of the learned APP, I have meticulously perused the record and proceedings.

3. From the material on record, it emerges that the gravamen of the complainant's allegation is that he has not been paid commission allegedly due to him in respect of certain commercial transactions. The complainant appears to assert that he rendered certain services to the accused persons' company and, having not been adequately compensated for the

same, now claims to be aggrieved.

4. Although the complaint contains references to alleged false representations made by the accused, it is pertinent to note that there is no specific allegation that such misrepresentations pertained to the fundamental nature of the accused company's business or to any fraudulent inducement regarding the existence of export orders. The purported misrepresentations, if any, appear to relate solely to the aspect of payment or non-payment of commission. Crucially, the complaint lacks any categorical or unambiguous averment that a specific sum was agreed upon as payable to the complainant. In the absence of a clearly pleaded contractual obligation or a defined quantum of consideration, the dispute, at its core, appears to be of a civil nature, arising out of an alleged breach of a commercial understanding, if any. It is further seen that the learned Magistrate, upon initial examination of the complaint, did not deem it appropriate to issue process forthwith. Instead, he invoked the provisions of Section 202 of the Code of Criminal Procedure, 1973, and directed an enquiry to be conducted by the police. It is well settled that such a course is adopted by the Magistrate when he entertains doubt as to the sufficiency of grounds for proceedings against the accused and seeks further material to arrive at a judicious decision.

5. In the present case, the police, upon conducting the inquiry as directed, submitted a report opining that no *prima facie* case warranting issuance of process was made out and that the dispute appeared to be of a civil nature. The said report did not furnish any additional material or evidence which could have dispelled the Magistrate's initial reservations or fortified the complainant's allegations to the extent of justifying criminal prosecution. Despite the absence of any fresh incriminating material in the police report, the learned Magistrate proceeded to issue process against the accused. The order issuing process against the accused is bereft of any cogent reasoning or discussion as to how the Magistrate arrived at a conclusion contrary to the police report. In the event that the Magistrate intended to disagree with the findings of the police, it was incumbent upon him to record specific reasons delineating the basis of such disagreement, in consonance with the settled principle of law.

6. The invocation of a criminal law in a matter essentially civil in nature amounts to an abuse of the process of the law and is liable to be interdicted at the threshold. The complaint does not disclose any intention to deceive or fraudulent inducement at the inception of the transaction, which is a *sine-qua-non* for the offence of cheating under Section 420 of the

IPC. The complaint appears to be vague and bereft of specific particulars regarding the alleged misrepresentation and the precise terms of the alleged agreement. It is trite law that mere breach of contract, without more, does not constitute a criminal offence.

7. In view of the foregoing, the present revision application stands dismissed.

(R.N. Laddha, J.)