Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1201 OF 2023
WITH
INTERIM APPLICATION NO. 3501 OF 2025

Deepak Sham Balani .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Ajeet Manwani a/w Mr. Avinash Manwani, Advocates for Applicant
- Mr. Sukanta A. Karmakar, APP for State
- PSI - Naresh Ghat, Samta Nagar Police Station, Mumbai

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 22, 2026

P. C.:

1. Heard Mr. Manwani, learned Advocate for Applicant and Mr. Karmakar, learned APP for State.

2. Present Application is filed seeking quashing and setting aside of the FIR and the consequential proceedings arising therefrom.

3. Applicant is an Advocate who has been practicing for the past more than 25 years at the bar. An offence of cheating and criminal breach of trust is filed against him and other accused persons. Originally, there were five accused persons out of whom three accused persons have been discharged.

**4.** Prosecution case is that accused No. 1 is the Administrator of the Society whereas accused No. 2 is the present Applicant. The prosecution's case is that the Applicant was engaged as Advocate of the Society to represent the Society before the Consumer Forum in respect of Society's pending cases, and he was issued two cheques totalling to Rs. 90,600/- net of TDS amount of Rs. 13,400/- for a gross amount of Rs. 1,04,000/- as his professional fees. The inquiry was conducted by the Audit Officer appointed by the Registrar into the accounts of the Society which were managed by the Administrator. In that inquiry, a finding was returned that the Applicant was issued the cheques to represent the Society before the Consumer Forum but in fact, the Applicant - Advocate did not represent the case of the Society and in connivance with the Administrator had siphoned off the amount of Rs. 1,04,000/-.

**5.** The case of the Applicant is that he was engaged by the Administrator of the Society to provide his professional services on behalf of the Society in Co-operative Court Case Nos. 165/2012 and 179/2013 and at the outset was paid an on-account cheque of Rs. 15,000/- which was acknowledged vide voucher dated 30.10.2023. Further, the Applicant has stated that a second cheque of Rs. 75,600/- (after deduction of Rs. 13,400 towards TDS) was paid to him to represent the Society in the aforesaid two matters.

**6.** The case of the Applicant is that the services of the Applicant were engaged much prior to the passing of the resolution of the Society dated 27.10.2013 by virtue of which the Society had barred the Administrator from engaging and making payment to the Advocate representing the Society. It is this very date which is crucial in considering the present case. Admittedly, as per prosecution, it is seen that pursuant to the date of passing of the unanimous resolution dated 27.10.2013 by the Society not to make any payment to the Advocate, the Administrator has not paid any amount whatsoever to the Applicant. Insofar as the engagement of the Applicant is concerned, he was duly engaged to represent the Society in the month of June by the Administrator.

**7.** Another point of contention argued by the Applicant is that when the inquiry was conducted by the Audit Officer, an FIR was registered on 23.08.2014 pursuant to an inquiry report which was a unilateral inquiry without giving any opportunity to the Applicant to explain his defense. It is the Applicant's case that notwithstanding the fact that he appeared before the Auditor on 01.08.2014 and sought time to produce the material on record to show that his engagement was prior to 27.10.2013 and he requested the Inquiry and Audit Officer to provide him with the copies of the vouchers and other documents on the basis of which the allegations were made against

him. The said documents were never provided to him. Neither the Inquiry Officer gave any opportunity to the Applicant to present his case.

**8.** It is the case of the Applicant that the professional fees received by him were towards the consultation offered by the Applicant and for drafting of the reply on behalf of the Society in Consumer Complaint Nos. CC 12/568 & 13/120 which were filed against the Society. Insofar as the Applicant is concerned, it is his case that he is not concerned with the resolution passed by the Society with regard to barring the Administrator from payment of Advocates fees. In so far as the Applicant is concerned, it is his case that he is not concerned with the resolution of the Society since he had a privity of contract with the Society whatsoever. Considering that the Administrator was looking after the affairs of the Society, the Applicant was engaged by the Administrator. The Applicant has more than 20 years of unblemished practice and no criminal antecedents whatsoever.

**9.** It is an admitted fact that the Auditor did not consider the request made by the Applicant neither heard the Applicant and came to the conclusion that the amount was wrongfully paid by the Administrator to the Applicant as Society's Advocate. Another issue that is argued is that the cheque was issued in the name of DB Law Associates and not in the name of the Applicant. This cannot be

countenanced because DB Law Associates stands for the initials of the Applicant himself whose name is Deepak Balani. In that view of the matter and looking at the material which is placed on record for filing of the vakalatnama, for preparing the affidavit-in-reply in the two cases on behalf of the Society in the Consumer Forum and for offering consultation, the Applicant was paid the aforesaid fees as his professional fees.

**10.** The material which is placed on record shows payment of substantial fees even otherwise towards salary and other charges by the Administrator which is also flagged by the Auditor. Once it is a confirmed fact that the Administrator was paid these fees prior to passing of the Society resolution dated 27.10.2013, it cannot be said that the Applicant cheated the Society in collusion with the Administrator. The receipt issued by the Applicant and the debit voucher is appended at page 113 of the Application which *prima facie* states that the amount has been paid to the Applicant towards legal and professional fees for preparing the reply in the two Consumer Cases delineated herein and for studying and perusal of the case papers. It is seen that the Special Auditor was asked to investigate by one of the members of the Society by alleging that the Administrator had paid huge sums for incurring various expenses including the above 2 payments to the Applicant in respect of the two Consumer

Cases and that the said Advocate did not file his Vakalatnama and never appeared before the Consumer Forum.

**11.** Considering the explanation which is offered by the Applicant and the work done by him for advising the Society, for studying the case papers of the Society and for preparing the affidavit-in-reply in both the Consumer Cases, it cannot be said that the Applicant had in connivance with the Administrator cheated the Society. Insofar as the role of Accused No. 1 - Administrator is concerned, he is indicted and the audit report prepared by the Special Auditor *prima facie* implicates him for a humongous amount of Rs. 4.98 Lakhs on various other counts.

**12.** Insofar as the other issues are concerned, the Applicant is not concerned with the same. Applicant is a professional Advocate registered with the Bar Council of Maharashtra and Goa and having practice of more than 23 years and in the course of his professional duties rendered professional service to the Society for which he issued appropriate invoices justifying the professional work undertaken by him.

**13.** Considering the aforesaid observations and findings, the Applicant has made out a case for grant of present Application.

Hence, present Criminal Application is allowed in terms of prayer clause (a) which reads thus:-

> *"a. The entire proceedings connected with CR/FIR No. 340 of 2014 registered at Samta Nagar Police Station, Mumbai U/s. 406, 420, 477(A) and 34 of Indian Penal Code along with C.C. No. PW/2366/2016 pending before Ld. Metropolitan Magistrate 17th Court at Borivali, Mumbai may be quashed and set aside against the present Applicant.*

**14.** Criminal Application is allowed and disposed. Interim Application is also disposed.

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[ MILIND N. JADHAV, J. ]

RAVINDRA MOHAN AMBERKAR
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