**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO.2496 OF 2024**

Kartik Dhanpal ]
Age : 39, Occupation : Business ]
R/o 20/12 Iduvai Road ]
Vajipalayam Pirivu ]
Iduvampalayam, Trippur ]
Tamil Nadu 641687 ]….Petitioner

Versus

1] State of Maharashtra ]
Through Public ]
Prosecutor, Senior ]
Inspector D. B. Marg Police ]
Station ]
]
2] Ashwin Kantilal Bhansilal ]
Age 35, Occupation : Business ]
Residence – Flat No.503, 5th Floor ]
Bharat Nagar Society ]
Grant Road, Mumbai. ]…..Respondents

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Mr. Ajay Basutkar a/w Ms. Shikha Shah and Adv. Ulkesh Purushottam i/by Ms. Payoshi Roy for the Petitioner.
Mr. Tanveer Khan, APP for the Respondent/State.
Mr. Reshant Shah (Through V.C.) i/by Lex Conseiller for the Respondent No.2.
IO/API Shivkumar Dhumal and PSI Deepak Hol, Dr. D B Marg Police Station present.

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**CORAM : ASHWIN D. BHOBE, J.**

**DATED : 13 March 2026**

**Oral Judgement:-**

**1.** Heard Mr. Ajay Basutkar, learned Advocate for the Petitioner Mr. Tanveer Khan, learned APP for the Respondent/State and Mr. Reshant Shah for Respondent No. 2 (appearing through V.C.).

**2.** Rule. Rule made returnable forthwith and by consent of parties heard finally.

**3.** This Petition under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code is filed by the Petitioner for quashing the FIR bearing No.43 of 2023 dated 03 February 2023, registered with the D. B. Marg Police Station, Mumbai, for offences punishable under Sections 420, 406, 409, and 504 of the Indian Penal Code (Impugned FIR) and the Chargesheet bearing No. PW/1800433/2024 arising out of the impugned FIR, pending before the 81st Court, Additional Metropolitan Magistrate, Girgaum, Mumbai.

**4.** The material facts relevant to the adjudication of this Petition are that Respondent No.2 is conducting business under the name and style of "Sachiya Steel International." Respondent No.2 supplied steel pipes and parts to the Petitioner upon request. Despite receiving the materials, the Petitioner did not pay the amounts owed to Respondent No.2. Respondent No.2's claim for the purchase price of Rs.

55,03,111/- relates to the sale made to the Petitioner in 2022. Due to the default in payment, Respondent No.2 filed a complaint on 03 February 2023, leading to the registration of the impugned FIR.

**5.** Mr. Ajay Basutkar, learned Advocate for the Petitioner, submits that the subject matter of the impugned FIR is purely a commercial transaction between the Petitioner and Respondent No.2. He submits that there is a dispute regarding the quality of the material supplied by Respondent No.2, which led to a disagreement over the payment of the specified amount. He submits that prior to the impugned FIR, Respondent No.2 issued a notice dated 19 August 2022 demanding payment, which clearly indicates that the dispute is purely civil and concerns money recovery. He submits that Respondent No.2 has filed a Commercial Suit No. 5690 of 2025 before the City Civil Court, Bombay, concerning the same subject matter as the impugned FIR. He submits that Respondent No.2 has transformed a civil dispute into criminal proceedings with the intent to harass the Petitioner and to recover amounts that Respondent No.2 is not entitled to. Therefore, he submits that the filing of the impugned FIR amounts to an abuse of the legal process.

**6.** Mr. Reshmat Shah, learned Advocate for Respondent No. 2 (appearing through V.C.), submits that the Petitioner has, in fact, cheated Respondent No. 2 by not paying for the material supplied to the Petitioner. He submits that the

Petitioner's argument about the material being defective is merely an afterthought. He submits that the Petitioner not only cheated Respondent No. 2 but also issued threats when Respondent No. 2 attempted to recover the amount. He further submits that the Petitioner produced false debit notes. He submits that although Respondent No. 2 has filed a Commercial Suit for recovery, this does not prevent the Petitioner from initiating criminal proceedings.

**7.** Heard arguments. Perused the records.

**8.** The allegations in the impugned FIR concerning the Petitioner are relevant. The relevant excerpt from the impugned FIR is reproduced below:-

> *"उर्वरित रक्कम मिळण्याकरीता मेसर्स मारवेल इन्टरनॅशनल या कंपनीचे खरेदी व्यवस्थापक श्री व्ही रेगन रेमीज व कंपनीचे मालक श्री कार्तिक धनपाल यांना विचारणा केली असता त्यांनी आज पाठवितो उदया पाठवितो असे सांगुन वेळ मारून नेले. परंतु त्यांनी रक्कम पाठविले नाही.*
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> *दिनांक 01.08.2022 रोजी मी सदर कंपनीचे मालक कार्तिक धनपाल यास फोन करून उर्वरित रक्कमेबाबत विचारणा केली असता त्यांनी उर्वरित रक्कम देण्यास नकार दिला व "तुझे क्या उखाडणा है वो उखाड वापस फोन किया तो बंबई में आके तुझे मारुगां "असे म्हणून मला षिवीगाळी करून धमकी दिली.*
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> *तरी मेसर्स मारवेल इन्टरनॅशनल लि. तिरुपुर, राज्य तामीळनाडु, या कंपनीचे खरेदी व्यवस्थापक श्री व्ही रेगन रेमीज व कंपनीचे मालक श्री कार्तिक धनपाल यांनी सुरुवातीस माझा विश्वास संपादन करून माझे कंपनी कडुन सन 2022 मध्ये एकूण 55,03,111/- किमतीचा माल घेवुन फक्त रू 15,00,000/- एवढी रक्कम त्यांनी आरटिजिएस द्वारे माझे कंपनीस पाठविले. उर्वरित एकुण रु 40,03,111/- (चाळीस लाख तिन हजार एकषे एक रूपये एवढी रक्कम न देता माझी फसवणुक करून सदर मालाचा अपहार करून त्यांनी मला षिवीगाळी करून धमकी दिली. म्हणुन त्यांचेवर कारवाई होणेस विनंती आहे."*

**9.** Gist of the impugned FIR relates to the supply of material by Respondent No.2 to the Petitioner and the Petitioner's default in paying the amounts.

**10.** The impugned FIR does not include any statement of the Respondent No. 2 being misled by the Petitioner to supply the material either on a false or misleading representation. There are no allegations in the impugned FIR against the Petitioner of inducing Respondent No.2 to part with the material, nor any allegations that the Petitioner had dishonest intentions at the time of purchasing the material.

**11.** Prior to the impugned FIR, Respondent No. 2 had issued an advocate's notice dated 19 August 2022, to the Petitioner. Paragraphs 3 to 7 of the said notice are as follows:-

> *(3) My clients further state that pursuant to your Purchase Order No.: MI/PO/112 dated 01/03/2022, my clients sold, dispatched and delivered to you "S.S. Rod/Flat/Patti/Pipes & Fittings materials worth a sum of Rs.6,12,415/- vide their Tax Invoice No.00288 dated 04/03/2022 Rs.6,12,415/-against 30 days credit payment basis. That S.S. Rod/Flat/ Patti/ Pipes & Fittings materials covered under the aforesaid Tax Invoice No.00288 dated 04/03/2022 Rs.6,12,415/- were sent to you through VRL Logistics Limited under their Consignment Note No. 9008633392 dated 05/03/2022 accompanied with E-Way Bill No.: and Delivery Challan No.00288 dated 04/03/2022, and the same were duly accepted, acknowledged and even consumed by you to your satisfaction without raising any dispute of whatsoever nature.*
>
> *(4) My clients further state that pursuant to your Purchase Order No.: MI/PO/114 dated 03/03/2022, my clients sold, dispatched and delivered to you "S.S. Rod/Flat/Patti/Pipes & Fittings materials worth a sum of Rs. 10,03,947/- vide their Tax Invoices No.00289 dated 05/03/2022 Rs.10.03,947/-against 30 days credit payment basis. That S.S. Rod/Flat/ Patti/ Pipes & Fittings*

*materials covered under the aforesaid Tax Invoices No.00289 dated 05/03/2022 Rs.10,03,947/-were sent to you through VRL Logistics Limited under their Consignment Note No.684403 dated 25/01/2022 accompanied with E-Way Bill No.: 2014-0238-0725 and Delivery Challan No.00289 dated 05/03/2022, and the same were duly accepted, acknowledged and even consumed by you to your satisfaction without raising any dispute of whatsoever nature.*

*(5) It is needless to mention that since you have made the payment in respect of earlier II Tax Invoices; hence, no details thereof is given.*

*(6) My clients state that the aforesaid transactions were against 130 days' credit payment basis, however you have willfully failed and neglected to pay the dues of my clients and as such now you are liable to pay interest @18% per annum. From due date of respective Tax Invoices, as per the normal trade, usage and practise.*

*(7) My client's states that they have repeatedly called upon you and your employees to, pay their dues, which you have agreed to pay at earliest, but willfully failed and neglected to do so till today.*

*In the aforesaid facts and circumstances, my clients do hereby call upon you to pay them, a principal sum of Rs.40,03,111/- along with accrued interest @18% per annum from due date of respective Tax Invoices as per trade, usage and practise within 7 days of receipt hereof, failure to do so any client shall adopt appropriate legal proceeding against you to recover the same, entirely at your costs and consequences thereof, which please be noted.*

*A copy of this legal demand notice is also sent to your banker Vis Indian Bank that you are as any clients are informed that you are heavily "indebted" and not also to pay the dues of your large number of creditors including of my clients.*

**12.** The Advocates’ notice dated 19 August 2022, issued by Respondent No. 2, does not contain any allegations of deceit or cheating, nor any claim by Respondent No. 2 that the Petitioner induced the Respondent No. 2 to supply goods or that the Petitioner’s intent was dishonest from the start to deceive Respondent No. 2. The impugned FIR does not make such a case or allegation against the Petitioner.

**13.** In response to the said notice dated 19 August 2022, the Petitioner sent a reply dated 22 September 2022. Paragraph No. 2 and 8 of the said Reply Notice dated 22 September 2022 is relevant and is reproduced herein below:-

> *(2) It is not admitted that my client placed the orders from 22.01.2021 till 05.03.2022 for which your client forwarded the materials under 14 invoices for a sum of Rs.91,15,870/-. It is admitted that my client has paid a sum of Rs.51,12,759/- and my client has to pay the remaining amount of Rs.40,03,111/-.*
>
> *(8) My client is running the business with good reputation. However, your client has approached my client for the supply of materials with good quality. Unfortunately, your client has supplied very poor and inferior quality of machineries which affected the business of my client. Therefore, my client Immediately contacted your client and conveyed the supply of machinery with inferior quality. In this regard, debit note is also given which is not at all considered by your client. Therefore, my client is not able to pay any amount to your client.*

**14.** In the case of *V. Y. Jose & Anr. v. State of Gujarat and Anr*[1], in paragraph nos. 13 and 14 the Hon'ble Supreme Court has observed as under:

> *13. Section 415 of the Penal Code defines cheating as under:*
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> > *"415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any 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, and which act or omission causes or is likely to*

1 2009 (3) SCC 78

*cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'."*

*14. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:*

(i) *deception of a person either by making a false or misleading representation or by other action or omission;*

(ii) *fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.*

*For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out.*

**15.** The Hon'ble Supreme Court, in the case of *Anil Mahajan v. Bhor Industries Ltd and others*[2], regarding nearly identical facts, stated in paragraphs 3, 4, 7 to 10, as follows:

*"3. The allegations in the complaint are that a memorandum of understanding (MOU) dated 16-8-2000 was executed between the accused and the complainant for the period 16-8-2000 to 30-11-2000, which, inter alia, stipulated that 50% of the payments against monthly quantity would be given in advance and balance 50% on receipt of the goods by M/s Shikhar Enterprises or its sister concern. The accused had two firms, namely, (1) M/s Shikhar Enterprises, and (2) M/s Gulshan Agencies at Delhi. The complainant delivered 56,94,120 reels of steel grip tapes valued at Rs 3,38,62,860 to the accused during the period 19-8-2000 to 20-11-2000 and out of this*

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2 (2005) 10 SCC 228

*amount, the accused made only part-payment of Rs 3,05,39,086 leaving balance amount of Rs 33,23,774. The allegations are that after making this payment, the accused did not make further payment despite repeated demands and started giving reasons such as cash-flow problems, non-receipt of right type of colour assortment and sales tax problems, etc., besides raising disputes in respect of the material purchased six years back being defective. After making the aforesaid averments in the complaint, it is concluded that the MOU was signed with mala fide and criminal intention of grabbing money and goods from the complainant's Company. The averments made in that regard are as under:*

> *"From the above it is very clear that MOU was signed by the accused with mala fide and criminal intention of grabbing money and goods from the complainant's Company and to deceive, cheat and cause wrongful loss to the complainant's Company, but the complainant was not aware of the criminal intention of the accused while execution of above MOU."*

*4. The complainant had also sent a notice dated 9-4-2001 to the accused, the relevant part whereof reads as under:*

> *"As per record my client has delivered reels of steel grip tapes of Rs 2,56,70,834, Against that you paid only Rs 2,09,91,559 to my client. o For balance amount my client is repeatedly demanding you through telephone and writing letters to you but still you are not responding to it. By your said act my client is suffering major loss in his above business. So at end my client has decided to issue this legal notice to you. So I am informing you by this notice that within 8 days after receiving this notice by you, you should arrange to pay Rs 46,79,275 which are due from you d to my client. My client is also demanding simple interest at the rate of 10% on above amount for loss of interest. If you failed to act upon as per notice, my client will take necessary action against you and you will be held responsible for all expenditure of it. Legal charges of this notice are kept on you."*

*In the aforesaid notice, there is no whisper about any deceit or cheating. On 3-5-2001, a complaint was filed by the complainant with Bhor Police Station where except a vague allegation about cheating, nothing of substance was stated. It would be useful to reproduce, as under, the said complaint:*

> *"Shri Anil Mahajan is the dealer of the Company for goods. That by an agreement dated 12-8-2000 the said dealer has supplied the goods by the Company worth 42,60,660 reels (tapes) the price of which is about f Rs 2,56,70,834 from 21-8-2000 to 30-11-2000. Out of that amount he has returned only Rs 2,09,91,559 and the remaining amount of Rs 46,79,257 is outstanding for recovery against him. In spite of repeated demands the said person has not paid the said amount. Consequently summons should be sent to him and criminal proceedings may kindly be started against Shri Anil Mahajan, the dealer. He has done cheating with the Company."*

*7. The order of the learned Additional Sessions Judge has been set aside ở by the High Court by the impugned judgment. The High Court, except noticing that the ratio of the judgment of this Court cannot be applied to all cases in a uniform way, has neither discussed the said judgment nor stated as to how it was wrongly applied by the learned Additional Sessions Judge. There is hardly any discussion in the impugned judgment for reversing a well-considered judgment of the learned Additional Sessions Judge.*

*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 above-noticed. 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.*

*9. In Alpic Finance Lid. v. P. Sadasivan' this Court was considering a case where the complainant had alleged that* *the accused was not regular in making payment and committed default in payment of instalments and the bank had dishonoured certain cheques issued by him. Further allegation of the complainant was that on physical verification certain chairs were found missing from the premises of the accused and thus it was alleged that the a accused committed cheating and caused misappropriation of the property belonging to the complainant. Noticing the decision in the case of Nagawwa v. Veeranna Shivalingappa Konjalgi wherein it was held that the Magistrate while issuing process should satisfy himself as to whether the allegations in the complaint, if proved, would ultimately end in the conviction of the accused, and the circumstances under which the process issued by the b Magistrate could be quashed, the contours of the powers of the High Court under Section 482 CrPC were laid down and it was held: (SCC p. 520, paras 10-11)*

> *10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil c and criminal law. The injury alleged may form the basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time, law permits the victim to proceed against the d wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that the respondents committed the offence under Section 420 IPC and the case of the appellant is that the respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person e practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any wilful misrepresentation. Even according to the appellant, the parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual f obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common*

> *sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, g he does not necessarily evade the debt by deception.*
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> *11. Moreover, the appellant has no case that the respondents obtained the article by any fraudulent inducement or by wilful misrepresentation. We are told that the respondents, though committed default in paying some instalments, have paid substantial amount towards the consideration.*
>
> *(emphasis supplied by us)*

> *10. We have examined the complaint and it is clear from its substance that present is a simple case of civil disputes between the parties. Requisite averments so as to make out a case of cheating are absolutely absent. The principles laid down in Alpic Finance Ltd. case! were rightly applied by learned Additional Sessions Judge and it cannot be said that the ratio of the said decision was wrongly applied. On due consideration, the learned Additional Sessions Judge had rightly set aside the order of the Magistrate issuing process to the appellant."*

**16.** Considering the facts in the case at hand as mentioned above, it is clear that a civil dispute between the Petitioner and Respondent No. 2 has been incorrectly depicted as a criminal case. The essential elements necessary to invoke the provisions of Section 420 are missing from the FIR and the evidence related to it.

**17.** Mr. Reshant Shah fairly states that the Respondent No.2 has filed the Commercial Suit No.569 of 2025 on the subject matter of the notice dated 19 August 2022, and the same is pending before the City Civil Court, Bombay.

**18.** Mr Reshant Shah, by referring to the words "*तुझे क्या उखाडणा है वो उखाड वापस फोन किया तो बंबई में आके तुझे मारूंगा,*" in the impugned FIR submit that offence under section 504 and 506 of the IPC is made out. The statement in the impugned FIR is a bald, unsubstantiated allegation.

**19.** Considering the entire impugned FIR at face value, no case is made out for attracting the ingredients of Sections 420, 406, 504, or 506 of the Indian Penal Code. The circumstances emerging from the case record suggest that Respondent No. 2 has attempted to criminalise a primarily civil dispute, thereby rendering it vexatious.

**20.** In view of the principles laid down by the Hon'ble Supreme Court in the case of *Haryana Vs. Bhajanlal*[3], continuation of the criminal proceedings would be an abuse of the process of law, thus warranting the exercise of powers under section 528 of BNSS.

**21.** This Petition is allowed in terms of prayer clause 10(i). Consequently, the impugned FIR and the chargesheet arising out of the impugned FIR are quashed. Rule made absolute in the above terms.

**22.** In the facts and circumstances of the present case, there shall be no order as to costs.

**23.** Writ Petition No.2496 of 2024 is disposed of.

**(ASHWIN D. BHOBE, J.)**

3 (1992) Supp (1) SCC 335