

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

CRIMINAL WRIT PETITION NO. 1578 OF 2026

1. Mr. Sunandan Kapur,
Age: 52 years, Occ: Business,
Having address at:
908-909, Emaar Capital Tower-1, M.G.
Road, Gurugram, Haryana – 122022.
2. Mr. Girish Sethi,
Age: 55 years, Occ: Business,
Having address at:
S-24 Forest County, Kharadi,
Vimannagar, Pune – 411 014.

... Petitioners

Versus.

1. The State of Maharashtra
(At the instance of Ambegaon Police
Station)
2. Shri. Milind Madhukar Tamboli,
Age: Adult, Occupation: Service,
R/o: Flat No. 441, Jijhal Bangla,
Shri Mahalaxmi Sahakari Gruha
Rachana Sanstha, Sahakarnagar
No. 1, Pune.

... Respondents

APPEARANCES:

For the Petitioners	Mr. Mayuresh Ingale a/w Mr. Gaurav Rana, Mr. Rakesh Umrani
For Respondent No. 2	Mr. Sandeep Karnik a/w Mr. Darsh Gala
For State Respondent No. 1	APP, Ms. Rajeshree Newton

CORAM : ASHWIN D. BHOBE, J.

RESERVED ON : 08th MAY 2026

PRONOUNCED ON : 15th JUNE 2026

JUDGMENT:

1. Heard Mr. Mayuresh Ingale, learned Advocate for the Petitioners, Mr. Sandeep Karnik, learned Advocate for Respondent No. 2 and Ms. Rajeshree Newton, learned APP for Respondent No. 1-State.
2. Rule. Rule made returnable forthwith. Heard finally, with the consent of the learned Advocates for the parties.
3. Petitioners, by this Petition filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereafter “BNSS 2023”), are before this Court seeking to quash the FIR bearing No. 0272/2025 dated 18.10.2025 (hereafter “impugned FIR”) registered at Ambegaon Police Station, Pune City, under Sections 3(5), 316(2) and 318(2) of the Bharatiya Nyaya Sanhita, 2023 (BNS) and the chargesheet arising out of the impugned FIR registered as R.C.C. No. 1263 of 2026, which is pending before the 5th Judicial Magistrate First Class at Pune (hereafter ‘Magistrate’).
4. The material facts gathered from the Petition, relevant to the adjudication of the present Petition, are that Petitioner No.1 is

the Vice Chairman and Petitioner No.2 is the Director of “SKH Sheet Metal Components Private Limited” (hereinafter “said Company”). Respondent No. 2 carries on the business of manufacturing components in the name and style “S. M. Enterprises”, a Micro Enterprise having Udyog Aadhar Memorandum No. MH26A0066006.

- a. Respondent No. 2 contends that the said Company approached Respondent No. 2 for the development of the components ‘Spindle Right Side’ and ‘Spindle Left Side’. Respondent No. 2 developed the component sample and upon approval from the said Company, supplied the components, on the agreed terms between the parties. Disputes arose between Respondent No. 2 and the said Company on account of non-payment/delayed payment of amounts claimed by Respondent No. 2 for the supply of the Components.
- b. Respondent No. 2 invoked the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (hereafter “MSMED Act, 2006”) by filing a proceeding under Section 18 of the MSMED Act, 2006, registered as Petition No. MH/26/M/PNE/03792 of 2022 before the Micro, Small and

Medium Enterprises Facilitation Council, Pune (hereafter “MSEF Council”). The amounts claimed by Respondent No. 2 in the said Petition, as per paragraph 5 of the said Petition, are as under:-

<i>“Total Outstanding Dues Billed</i>	<i>Rs. 40,56,273/-</i>
<i>Interest Up To Feb 22</i>	<i>Rs. 3,48,463/-</i>
<i>Unbilled Amt. As per Bal. order</i>	<i>Rs. 7,99,470/-</i>
<i>And Running Stock In Hand</i>	<i><u>Rs. 28,20,000/-</u></i>
<i>Total</i>	<i>Rs. 80,24,206/-“</i>

c. The MSEF Council disposed of Petition No. MH/26/M/PNE/03792 of 2022, vide Award dated 25.05.2023, passed under Section 18(3) of the MSMED Act, 2006 (hereafter “said Award”). The operative part of the said Award reads as under:-

“ ORDER

- 1) *The Reference Petition No. MH/26/M/PNE/03792 is partly allowed.*
- 2) *Respondent is hereby directed to pay to the Petitioner an amount of Rs. 40,56,273/- (Rupees Forty Lakh Fifty Six Thousand Two Hundred and Seventy Three Only) along with the interest as per the provisions of the section 15 and 16 of MSMED*

Act, 2006 till realization of amount to the Petitioner.

3) The amount paid by Respondent during the course of petition, if any shall be subtracted from final payable amount.

4) The principal and interest amounts are to be paid within one month from the date of receipt of this award.

5) No order as to cost.

6) Award is submitted accordingly.”

d. The said Company, aggrieved by the said Award, filed Application under Section 34 of the Arbitration and Conciliation Act, 1996, read with Section 19 of the MSMED Act, 2006, before the District Court, Pune, which were registered as Civil M.A. No. 1049 of 2023.

e. On 06.01.2024, Respondent No. 2 filed execution proceedings under Section 36 of the Arbitration and Conciliation Act, 1996, read with Order XXI, Rule 11(2) of the Code of Civil Procedure, 1908, before the District Court, under Darkhast No. 660 of 2024, seeking execution of the said Award.

- f. By judgment and order dated 22.08.2024, the District Court, Pune, dismissed Civil M.A. No. 1049 of 2023, thereby upholding the said Award.
- g. By letter dated 20.05.2025, the said Company gave its No-objection to the withdrawal of the amount deposited by the said Company in Civil M.A. No. 1049 of 2023.
- h. Under the legal notice dated 02.04.2025, Respondent No. 2 called upon the said Company to pay Rs.47,59,470/-. The claim was based on the ground that the said amount was due and payable for the supply of components to the said Company.
- i. The said Company disputed the claim in its reply dated 27.05.2025.
- j. Non-payment of the amount claimed by Respondent No. 2 vide their legal notice dated 02.04.2025 led Respondent No. 2 to lodge the complaint dated 18.10.2025. Based on the said complaint, Respondent No. 1 registered the impugned FIR and upon investigation, filed the charge sheet.

k. Although Petitioner Nos. 1 and 2 were not named as accused in the impugned FIR, the Petitioners have been arrayed as Accused Nos. 1 and 2 in the charge sheet.

5. Mr. Mayuresh Ingale, the learned Advocate for the Petitioners, submits that the subject matter of the impugned FIR is a pure commercial dispute *inter se* between the said Company and Respondent No. 2. He refers to the said Award and submits that the claim made by Respondent No. 2, which is the subject matter of the impugned FIR, has been rejected. He submits that Respondent No. 2 has accepted the said Award. He submits that the entire amount ordered to be paid under the said Award has been paid to Respondent No. 2. He submits that the filing of the impugned FIR, amounts to an abuse of the process of law. He, therefore, seeks the quashing of the impugned FIR and the chargesheet arising out of it against the Petitioners.

6. Mr. Sandeep Karnik, the learned Advocate for Respondent No. 2, submits that even if a transaction gives rise to a civil cause of action, the litigant is not precluded from invoking the criminal remedies available to the litigant. He submits that although the MSEF Council has declined to grant the amounts referred to in the

legal notice dated 02.04.2025, now the subject matter of the impugned FIR, the MSEF Council had granted liberty to Respondent No. 2 to approach the appropriate Forum to file appropriate proceedings. He, on instructions, submits that Respondent No. 2 has not challenged the said Award. He submits that the filing of the impugned FIR is the recourse Respondent No. 2 has availed to recover the amount due and payable by the said Company to Respondent No. 2. He submits that no case is made out to entertain this Petition.

7. Ms. Rajeshree Newton, learned APP for the State, submits that upon receipt of the complaint dated 18.10.2025, Respondent No.1 registered the impugned FIR and after investigation, filed the charge sheet.
8. Perused records with the assistance of the learned Advocates.
9. The Petitioners, who are the Vice Chairman and the whole-time Director of the said Company, though not arrayed as Accused in the impugned FIR, have been arrayed as Accused Nos. 1 and 2 in the chargesheet. The note in the chargesheet regarding Petitioner Nos. 1 and 2 reads as follows:

“यातील आरोपीस बी.एन.एस.एस, २०२३ क. ३५(३) अन्वये समजपत्र देण्यात आलेले आहे. परंतु ते तपासकामी हजर राहीले नाहीत.”

10. Allegations in the impugned FIR and the material forming part of the charge sheet disclose a commercial transaction between the said Company and Respondent No. 2 relating to the sale and purchase of components “Spindles” and to issues of payments, non-payment and delay in payment.

11. Proceedings initiated under the provisions of the MSMED Act, 2006, by Respondent No. 2 to recover the amounts due and payable by the said Company under the said commercial transaction culminated in the said Award passed by the MSEF Council. In paragraph 9 of the said Award, the following observations are recorded:

“9) However in view of provisions of MSMED Act the unbilled amount and running stock in hand amounting to Rs. 7,99,470/- and Rs. 28,20,000/- and interest up to February 2022 as claimed by Petitioner is not liable to get allowed. Hence the claim of Petitioner to that extent is hereby rejected.”

12. The said Award was accepted by Respondent No. 2. Although the said Company challenged it, the challenge failed, thereby rendering the said Award final. Amounts payable under the said Award are paid by the Company to Respondent No. 2, as submitted

by Mr. Mayuresh Ingale, the learned Advocate for the Petitioners, and not disputed by Mr. Sandeep Karnik, the learned Advocate for Respondent No. 2.

13. Records reveal that Respondent No. 2, having failed to recover the amounts claimed in Petition No. MH/26/M/ PNE/03792 under the remedy specifically provided for under the MSMED Act, 2006, has resorted to filing the impugned FIR.

14. Mr. Sandeep Karnik, learned Advocate for Respondent No. 2, submits that the failure of the said Company to comply with the payment requisition in the legal notice dated 02.04.2025 resulted in the lodging of the impugned FIR on 18.10.2025.

15. Paragraphs 3 to 12 of the legal notice dated 02.04.2025, issued by Respondent No. 2 to the said Company, are reproduced below:

- “3. Our client states that, already there is litigation between our client and your company in respect of payment of spindles which were specifically and particularly manufactured as per your requirement and demand adding process from their side for approval with you.*
- 4. Our client states that, from first visit of concerned officers of your firm, our client has taken much efforts in developing required product as per your demand, they not only use their skills but also invested a lot by incurring financial investment.*
- 5. Our client states that, already in a petition before MSME in case number MH/26/M/PNE/03792 the judicial authority has passed order against your company for sake of knowledge our client is reproducing some important part of the order passed on 25/05/2023. Our client states*

that, as MSME has no jurisdiction other issues of payment they by way of their order which is mentioned above have asked Plaintiff to approach proper judicial forum to recover the remaining amount.

6. *Our client states that, as both our client and your company are part of business community, they expect requirement of financial payment in timely manner.*
7. *Our client states that, with healthy business ethics our client is in expectation that after order of MSME as assured by you, our client will get the payment at the earliest as per award granted.*
8. *Our client states that, as per the deal of supply of material as per requirement of your company the same is fulfilled by our clients, then and then only you have accepted material from our client. You neither made any complaint about quality of the material supplied by our client and nor rejected the same. As such our clients have completed their part of transaction.*

9. *Our client state that, you are also aware that as per table below following amount:-*

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Total (Rs.)</i>
1.	<i>According to Purchase order No. 4500078735 dated 18/10/2021 for 5000 sets out of which 2835 sets are still pending with our client.</i>	<i>7,99,470/-</i>	<i>7,99,470/-</i>
2.	<i>10000 sets of spindles manufactured on assurance of your company but not collected</i>	<i>28,20,000/-</i>	<i>28,20,000/-</i>
3.	<i>Interest on above one & two mentioned of this table</i>		<i>11,40,000/-</i>
		<i>Total</i>	<i>47,59,470/-</i>

10. *Our client states that, your concerned officer after decision of MSME petition had agreed to pay above amount after consultation with all of you directors. But there is no response from your side till today. The*

statement to that effect is given in Bharati Vidyapith police station in an enquiry which is initiated on complaint of our client.

- 11. Our client states that you have sent some expertise in metrology and thereby done some acts which are against professional ethics and used basic fundamental of material which our client has supplied. Our client reserves the right to take action against you for the said act.*
- 12. Our client states that, you by way of this notice is requested to make payment as mentioned in para no. 9 of this notice within 15 days of receipt of this notice and if you fail to do the same our client will be constrained to take necessary legal action against your company and all of you directors of the company will be held responsible for the cost and consequences of the same.*

This legal notice.”

16. The allegations of deception or inducement in the legal Notice dated 02.04.2025 are lacking. The gist of the controversy appears to be the recovery of the amount.

17. It is settled law that, upon the same cause of action and based on the same set of facts, both civil and criminal proceedings may be maintained, subject to the ingredients of the alleged offence being made out and the criminal proceedings not being used as a pressure tactic. Petitioners, having failed to obtain relief through a civil remedy in respect of the commercial transaction, and that too after the civil claim was rejected by the Forum provided under a Statute which Respondent No. 2 had chosen to invoke, have clothed a dispute, which is indubitably civil in nature, in a criminal garb.

18. The Hon'ble Supreme Court in the case of *A. M. Mohan Vs. State represented by SHO and another* in paragraph Nos. 19 to 22 has observed as follows :-

"19. The Court has also noted in Indian Oil Corpn., the concern with regard to a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court observed that this is obviously on account of a prevalent impression that civil law remedies are time-consuming and do not adequately protect the interests of lenders/creditors. The Court also recorded that there is an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. The Court, relying on the law laid down by it in G. Sagar Suri v. State of U.P.¹⁴ held that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. The Court also observed that though no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.

20. This Court in *R.K. Vijayasathy v. Sudha Seetharum*² has culled out the ingredients to constitute the offence under Sections 415 and 420 IPC, as under: (SCC pp. 745-46, paras 15-20)

"15. Section 415 of the Penal Code reads thus:

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

¹ (2024) 12 SCC 181

² (2019) 16 SCC 739

16. *The ingredients to constitute an offence of cheating are as follows:*

16.1. *There should be fraudulent or dishonest inducement of a person by deceiving him:*

16.1.1. *The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or*

16.1.2. *The person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and*

16.2. *In cases covered by 16.1.2 above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.*

17. *A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.*

18. *Section 420 of the Penal Code reads thus:*

420. Cheating and dishonestly inducing delivery of property.---- *Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'*

19. *The ingredients to constitute an offence under Section 420 are as follows:*

19.1. *A person must commit the offence of cheating under Section 415: and*

19.2. *The person cheated must be dishonestly induced to*

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

20. Cheating is an essential ingredient for an act to constitute an offence under Section 420."

21. A similar view has been taken by this Court in Archana Rana v. State of U.P.³, Deepak Gaba v. State of U.P.⁴ and Mariam Fasihuddin v. State of Karnataka⁵,

22. It could thus be seen that for attracting the provision of Section 420 IPC, the FIR/complaint must show that the ingredients of Section 415 IPC are made out and the person cheated must have been dishonestly induced to deliver the property to any person; or to make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. In other words, for attracting the provisions of Section 420 IPC, it must be shown that the FIR/complaint discloses:

(i) the deception of any person;

(ii) fraudulently or dishonestly inducing that person to deliver any property to any person; and

(iii) dishonest intention of the accused at the time of making the inducement.

19. The impugned FIR and the material collected pursuant to it do not disclose the essential ingredients of offences under Sections 316(2) and 318(2) of the BNS. A perusal of the allegations in the complaint does not show any dishonest intention on the part of the Petitioners. No such intention can be seen or even inferred, since the entire dispute pertains to contractual obligations between the parties. Since the very ingredients of Section 318(2) of the BNS are not attracted, the prosecution initiated is wholly untenable. Even if

³ (2021) 3 SCC 751

⁴ (2023) 3 SCC 423

⁵ (2024) 11 SCC 733

the allegations are considered, they merely constitute a breach of contract and such a breach cannot give rise to criminal prosecution for cheating unless a fraudulent or dishonest intention is shown from the outset of the transaction.

20. In view of the above and considering the material at its face value, the ingredients of the offences under Sections 316(2) and 318(2) of the BNS, as alleged against the Petitioners, are not made out. Thus, this is a fit case for exercise of discretion under Section 528 of the BNSS, 2023, in view of the parameters laid down by the Hon'ble Supreme Court in *State of Haryana Vs. Bhajan Lal*⁶.

21. For the reasons stated hereinabove, this Petition is allowed in terms of prayer clauses (a) and (a1) qua the Petitioners, which read as follows:-

“a. Quash and set aside FIR No. 0272/2025 dated 18.10.2025 registered at Ambegaon Police Station, Pune City, under Sections 3(5), 316(2), and 318(2) of the Bharatiya Nyaya Sanhita, 2023, and all proceedings arising therefrom.

a1) Call for the records and proceedings bearing no. RCC No. 1263 of 2026 pending before the Ld. 5th Joint Civil Judge J.D. and JMFC Pune and after examining the legality of proceedings, quash and set aside criminal proceeding bearing RCC No. 605 of 2026 and thereby, quash and set aside the chargesheet and order of taking cognizance, if any. Consequently, the impugned FIR and the chargesheet registered as RCC No. 1263 of 2026 pending before the 5th Joint Civil Judge Junior Division and JMFC, Pune are quashed and set aside.”

⁶ 1992 Supp (1) SCC 335

22. Rule is made absolute in the above-said terms qua the Petitioners.

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

23. Criminal Writ Petition is disposed.

[ASHWIN D. BHOBE, J.]